

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1111

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

B
R
S

UNITED STATES OF AMERICA,

Appellee,

v.

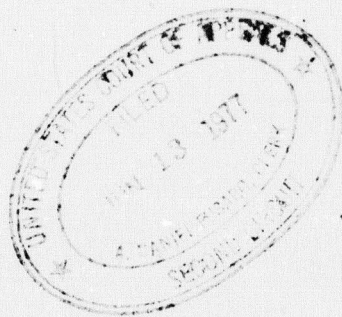
No. 77-1111

ENRIQUE MELENDEZ,

Appellant

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF CONNECTICUT

APPENDIX FOR APPELLANT



F. Mac Buckley
Buckley & Santos
51 Russ Street
Hartford, Connecticut 06106
Attorney for Appellant

PAGINATION AS IN ORIGINAL COPY

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205 2

a/k/a "Kiki"

3/25

76 29

1

21:846

conspire to possess with intent to distr.
(Cocaine II) (Ct. 1)

1

21:841(a)(1)

possess w/ intent to distr. and did
distr. (Cocaine II) (cts. 2&3)

2

\$ 30,

4/2/76

X

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT X	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Began 4/1/76	High Risk Date 3/25/76	Test Set For 4/26/76	Verdict 7/7/76	Disposition 1/6/77
Summons Served	Indict Waived	1st Plea 4/26/76	Test Filed 1/5/77	X Convicted
First Appearance	In Charging District	Final Plea	Test Filed 1/6/77	X Sentence
	Superseding Indict/Info			

SEARCH WARRANT	ISSUED	DATE	INITIAL NO.	INITIAL APPEARANCE DATE	INITIAL NO.	OUTCOME
Issued	Return					
Summons	Served					
Arrest Warrant	COMPLAINT					
OFFENSE						

U.S. Attorney at

Peter C. Dorsey
Thomas P. Smith, Esst.

ATTORNEYS

F. Mac Buckley
51 Russ St.
Hartford, Conn.

ORTIZ, 2

1976

3/25

Indictment, filed. Bench Warrant to issue with bond to be set by Magistrate. TO BE SEALED. (Blumenfeld, J.)

3/25

Bench Warrant issued and handed US Marshal.

4/13

Government's Motion For Unsealing of Indictment with Order thereon, filed. (Blumenfeld, J.) m-4/13/76

4/14

Magistrate's Bond in the amount of \$8000 with 10% surety, filed.

4/23

Magistrate's papers filed...docket, Bail Reform Act No. 1, Magistrate's Temporary Commitment with return thereon, Warrant for Arrest of Defendant with return thereon, and CJA 23 Financial Affidavit. (Eagan, Mag.)

4/23

Magistrate's tape, filed. (Eagan, Mag. - 76-37-MH)

4/26

Appearance of F. Mac Buckley, filed. PLEA of not guilty entered to all counts. Interpreter Lucia Maynard sworn. Same bond cont'd. Two wks. for Motions; one wk. for Govt. response. Case to be assigned for trial. (Clarie, J.)

7/6

Jury Assg. List Cal. - 6th jury case for tomorrow. (Clarie, J.)

7/7

Jury Trial - Myda Kivchak sworn as interpreter. Notice filed by U.S. Atty. re previous convictions. (Clarie, J.)

AD 256

Continued

7/7

Jury Trial - Interpreter M. Kivchak previously sworn to serve on this case. 31 Jurors remain - already sworn on Voir Dire. Voir Dire questions filed by Atty. Cramer. Panel of 28 drawn. Challenged for cause by Deft's. Panel of 12 drawn. There being only one juror left & counsel not agreeing to his use as alternate Court advises Jury they will not be sworn until they begin to serve on case. Jury & remainder of panel excused until further order of the Court. Jury to be notified when case will go forward. Court recessed at 12:27 p.m. (Clarie, J.)

7/8

Court Reporter's notes and Sound Recordings of Proceedings held on April 26, 1976 filed in Hfd. (Sperber, R.)

7/12

Motion For Selection of Trial Date, filed by Govt.

7/13

Endorsement entered and filed on Motion For Selection of Trial Date, "7/13/76. The case is assigned as the first case on July 27th, 1976; So Ordered." (Clarie, J.) M. 7-13-76. Copies mailed to Counsel of Record.

7/13

Motion of Deft. Melendez to Prohibit Use of Prior Conviction For Impeachment Purposes, filed.

7/13

Endorsement entered and filed on Motion to Prohibit Use of Prior Conviction For Impeachment Purposes, "7/13/76. Motion Denied." (Clarie, J.) M. 7-13-76. Copies mailed to counsel of record.

7/13

Letter dated July 13, 1976 from Thomas P. Smith, filed.

7/13

Endorsement entered and filed on Motion to Reveal Identity of Informants, "7/13/76. In view of the Govt's. compliance as demonstrated by the file correspondence of even date, the Court finds the issue is now moot. So Ordered." (Clarie, J.) M. 7-13-76. Copies sent to counsel of record. (re Deft. Ortiz)

7/27

JURY TRIAL - Govt. moves to sever case of Enrique Melendez. Motion Granted. (Clarie, J.) (See co-defendant's docket)

8/12

Notice of Readiness, filed by the Govt.

8/20

JURY ASSG. LIST - Continued 6 to 8 wks. when Atty. Buckley shall have completed his present trial - Speedy Trial waived. (Clarie, J.)

10/27

Letter dated October 26, 1976 from F. Mac Buckley to Hon. T. Emmet Clarie, filed.

11/76

JURY ASSG. LIST - Over - Atty. Buckley to forward letter. (Clarie, J.)

11/16

JURY TRIAL - 39 jurors available. 5 jurors challenged for cause. Panel of 22 drawn. Challenges made. 12 jurors and 2 alternates drawn & sworn. One juror excused and replaced as she is related to interpreter. (Clarie, J.)

Continued

FOR ALL RECEIPTS ON PAYMENTS

DATE	RECEIPT NUMBER	CO NUMBER	DATE	RECEIPT NUMBER	CO NUMBER

BEST COPY AVAILABLE

B

V. EXCLUDABLE DELAY
(a) (b) (c) (d)

DATE

PROCEEDINGS (continued)

(Document No.)

1976

11/17

Hearing in Chambers - Alicia Goshdigian sworn as interpreter. Atty. Buckley states oral motion that Judge Clarie disqualify himself & have case transferred to another judge. Motion Denied. (Clarie, J.)

12/23

Application for Writ of Habeas Corpus ad Testificandum and Order, filed. (Clarie, J.) m-12/27/76 Two attested copies handed US Marshal in Hartford.

1977

1/5

JURY TRIAL commences. Jury of 14 report. Lucia Maynard sworn as interpreter. Govt. witnesses sequestered at request of Atty. Buckley. 2 Govt. witnesses sworn & testified. Govt. Exh. 1 and 3, filed. Govt. Exh. 2 marked for identification. Def. exh. A & B marked for identification. Def. exh. C, filed. Stipulation filed & read to jury. Govt. rests at 4:26 p.m. Defendant sworn & testified. Defense rests at 4:34 p.m. Court adjourned until 10:00 a.m. tomorrow at 4:35 p.m. (Clarie, J.)

1/6

JURY TRIAL continues. Jury of 14 report. Defendants Request to Charge, filed. Atty. Buckley makes Motion For Judgment of Acquittal. Motion Denied. Govt. summations from 10:16 a.m. to 11:00 a.m. Def. summations from 11:15 a.m. to 12:03 p.m. Govt. rebuttal from 12:04 p.m. to 12:07 p.m. Court charge from 1:19 p.m. to 2:05 p.m. Jury retires at 2:06 p.m. after alternates are excused. Exhibits & copy of Indictment given to jury at 2:11 p.m. Jury sends note out at 4:52 p.m. Jury returns to Courtroom at 4:56 p.m. Note marked as Court Exh. A. Part of charge re-read to jury. Jury retires at 4:00 p.m. Jury returns with verdict of guilty on all 3 counts at 4:04 p.m. Jury polled at request of Atty. Buckley. Verdict ordered accepted & filed by Court. Atty. Buckley moves to continue on same bond. Bond set at \$15,000 full surety. Court adjourned at 4:19 p.m. (Clarie, J.)

1/11

Order For Return of Bond, filed. (Newman, J.) M.1-14-77.

1/26

Bond in the amount of \$15,000.00 with full surety (Midland Ins. Co. by Charles C. Sticka), filed. (Blumenfeld, J.) m-1/26/77

2/9

Court Reporter's notes of Proceedings held on November 16, 1976 and January 5 & 6, 1977, filed in Hartford. (Sperber, R.)

2/14

DISPOSITION - Lucia Maynard, sworn as interpreter at trial, to continue as interpreter for disposition. Seven (7) yrs. impr. on each of three counts to run concurrently to be followed by a Special Parole period of 3 yrs. pursuant to Title 21 USC Sec. 841. Same bond to continue on condition he reports to probation officer weekly and also that no information come to attention of Court that deft. is dealing in drugs or any member of his family. (Clarie, J.)

CONTINUED

DATE
1977

PROCEEDINGS (continued)

V. EXCLUDABLE DEF

2/15

(Document No.)
Judgment and Commitment Order, filed. (Clarie, J.)
M.2-16-77. Two attested copies handed US Marshal
and one attested copy handed US Probation Officer.

2/23

Motion For Assignment of Counsel and Granting
Leave to Appeal as Poor Person with attached
Affidavit of Enrique Melendez, filed.

2/23

Endorsement entered and filed on Motion For
Assignment of Counsel. 2/23/77. Motion granted
ex parte. / appointing F. Mac Buckley. (Clarie, J.) M.2-23-77.
Copies sent to counsel of record.

2/23

Notice of Appeal, filed.

2/25

Certified copies of Notice of Appeal and docket
entries mailed to USCA. Certified copy of Motion
For Assignment of Counsel with Endorsement thereon
also mailed to USCA.

(a) (b) (c)

UNITED STATES OF AMERICA

v.

ENRIQUE MELENDEZ, a/k/a "Kiki",
and JESUS ORTIZ, a/k/a "Chombo"

CRIMINAL NO. H-76-29

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT I

On or about the 10th day of February, 1976 at Hartford, in the District of Connecticut, the defendants ENRIQUE MELENDEZ and JESUS ORTIZ did unlawfully, wilfully and knowingly combine, conspire, confederate and agree with each other, and with others to the Grand Jury unknown, to commit offenses against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1), by knowingly and intentionally possessing with intent to distribute a controlled substance, to wit: a quantity of cocaine, and to knowingly and intentionally distributing the aforesaid controlled substance, i.e., said quantity of cocaine; all in violation of Title 21, United States Code, Section 846.

OVERT ACTS

In furtherance of the aforesaid conspiracy, and to effect the objects thereof, the defendants and co-conspirators did perform the following overt acts:

1. On February 10, 1976 ENRIQUE MELENDEZ and JESUS ORTIZ had a conversation
2. On February 10, 1976 JESUS ORTIZ handed a package to ENRIQUE MELENDEZ.

COUNT TWO

On February 10, 1976 at Hartford, in the District of Connecticut, ENRIQUE MELENDEZ and JESUS ORTIZ, the defendants

herein, knowingly and intentionally did possess with intent to distribute a quantity of cocaine (a Schedule II Controlled Substance), in violation of Title 21, United States Code, Section 841(a)(1).

COUNT THREE

On February 10, 1976 at Hartford in the District of Connecticut, ENRIQUE MELENDEZ and JESUS ORTIZ, the defendants herein, knowingly and intentionally did distribute a quantity of cocaine (a Schedule II Controlled Substance), in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL.

Foreman

PETER C. DORSEY
United States Attorney

BY _____
THOMAS P. SMITH
Assistant U. S. Attorney

1 THE FOLLOWING TRANSPIRED ON NOVEMBER 16, 1976,
2 IN CHAMBERS:

3 MR. SMITH: Your Honor, the record should
4 reflect that we have present now Miss Alicia
5 Goshdigian, who is a Spanish speaking interpreter.

6 I have spoken with her and asked her to speak
7 with Mr. Melendez. And she has done that, and she
8 has indicated to me that she has absolutely no
9 problem understanding him, nor does he appear to
10 have any problem understanding her.

11 THE COURT: All right. Are you willing to be
12 an interpreter for Mr. Melendez?

13 MISS GOSHDIGIAN: Yes, I am.

14 THE COURT: Will you swear the interpreter,
15 Madame Clerk, please.

16 (The interpreter was sworn.)

17 THE COURT: Mr. Melendez, can you understand
18 Miss Goshdigian?

19 THE DEFENDANT: (Through the interpreter):
20 Yes.

21 THE COURT: And has it been explained to you
22 why Mr. Buckley asked me that we follow this
23 procedure of having you come into chambers, because
24 he wants to make a motion concerning this case of
25 yours?

1 MR. BUCKLEY: I didn't tell him that, your
2 Honor.

3 THE COURT: You haven't told him?

4 MR. BUCKLEY: No.

5 THE COURT: I think probably as I speak it
6 might be well for you to translate to him what
7 I am saying.

8 Has your attorney explained to you why he
9 asked you to come into chambers here today?
10 Has your attorney explained that to you?

11 THE DEFENDANT: (Through the interpreter):
12 Your Honor, it is because I can't understand
13 English very well.

14 MR. BUCKLEY: Your Honor, could I put a
15 statement on the record?

16 THE COURT: You can, but your interpreter
17 must interpret it word for word, what you are
18 saying, as you proceed.

19 Can you do that?

20 THE INTERPRETER: Yes, I can.

21 THE COURT: All right.

22 MR. BUCKLEY: Your Honor, I don't know if my
23 client understands what "in chambers" means, but
24 I have not told him why I asked to come into your
25 chambers or office here, to make a motion.

1 THE COURT: Tell him now.

2 MR. BUCKLEY: I asked him in here to make the
3 motion because I did not wish to make it in front
4 of all the jurors out in the courtroom.

5 THE COURT: Proceed.

6 MR. BUCKLEY: Your Honor, I would move at
7 this time to disqualify your Honor from sitting on
8 this case, and ask that the case be transferred to
9 another judge, for the following reasons: on
10 December 21, 1970 your Honor sentenced Mr. Melendez,
11 on a prior federal narcotics violation, and had
12 available at the time of that sentencing a
13 presentence report concerning the facts of that
14 violation.

15 Your Honor sentenced Mr. Melendez to, I
16 believe, two years custody of the Attorney General,
17 execution suspended, and a period of probation.

18 I believe, your Honor, the reason for the
19 probation, as opposed to time in prison, was that
20 he was only 17 or 18 at the time. And I think I
21 am aware of that, your Honor, because I was a
22 prosecutor on that case -- which I think the
23 record should reflect.

24 THE COURT: Does that disqualify you as being
25 defense counsel now?

1 MR. BUCKLEY: I think that is a decision that
2 the defendant has made, your Honor.

3 Then again, your Honor, on November 26, 1973,
4 I believe -- yes -- I'm sorry, your Honor, I think
5 it was 1972. Mr. Smith may have the date in the
6 file.

7 On that date your Honor violated Mr. Melendez'
8 probation, for use of narcotics. That was the
9 principal reason. And he did at that time have
10 state cases pending. That was another reason it
11 was put on the record. And he had been convicted
12 in the state, I believe, of breaking and entering,
13 which he did some time for, and was subsequently
14 violated.

15 Your Honor sentenced him to two years in the
16 custody of the Attorney General for the probation
17 violation, which Mr. Melendez served at F.C.I. in
18 Danbury.

19 And then in July, late July and early August
20 of this year your Honor sat as a trial judge, with
21 a jury, in the case of the United States against
22 Jesus Ortiz, who is the co-defendant in this
23 indictment, charged with the identical crimes that
24 Mr. Melendez is.

25 And in that case the jury convicted Mr. Ortiz

1 on all three counts, and subsequently, I believe
2 this fall, your Honor sentenced Mr. Ortiz to 8 years
3 in the custody of the Attorney General.

4 I would make the motion, your Honor, on two
5 bases: first, your Honor is in a position, from
6 having been involved in Mr. Melendez' first
7 narcotics case, and the violation of his probation
8 on that case, to have received information as to
9 his prior criminal background, and problem with
10 drugs, and prior state offenses.

11 Secondly, your Honor in the matter of
12 presiding as the trial judge in the case of U.S.
13 against Jesus Ortiz, your Honor and the jury heard
14 evidence from one particular witness, namely,
15 Luis Lopez. And I have reason to believe, from all
16 the information that the Government has given me,
17 that this case will be almost identical in nature;
18 that the principal Government witness will be
19 Mr. Lopez, and the principal issue in the case is
20 the credibility of Mr. Lopez.

21 Now the jury, of course, is the ultimate
22 finder of fact on the question of credibility, but
23 in trying the first case, on a motion for judgment
24 of acquittal, or a directed verdict of acquittal,
25 and on the subsequent motion to set aside the

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verdict, your Honor would pass on the weight of the evidence and the credibility of the witnesses -- not the jury. And in so doing your Honor, at least to the extent of what quantum of evidence is credible to get to the jury, has made a decision. And your Honor would have to again sit and hear Mr. Lopez on the same and similar evidence.

So, it is a combination -- it isn't just a prior trial of a co-defendant, but it is the fact that your Honor has also had some dealings in sentencing this man in the past, and is aware of his background and the problems he's had.

Now I realize that for judicial economy and convenience it may be better to allow your Honor to sit on this case, but I don't think it is in the interest of my client. And I think it raises a possibility of partiality, due to the prior sentencing, and the fact that your Honor has had to pass on certain motions in Mr. Ortiz' case.

Now in this circuit, your Honor, there is authority for the proposition that in a new trial -- in other words, where a new trial is ordered, a judge, a District Judge, should not sit on the trial of the same defendant in a second case.

Now, that, by analogy, is the closest situation

1 I was able to find to this.

2 There is one case in this circuit, U.S.
3 against DiLorenzo, at 429 Fed. 2nd, 216, where the
4 Court held that it was proper for a District Judge
5 to sit on the trial, the successive trial of a
6 co-conspirator. However, in that case the judge
7 that sat on the first trial, involving some nine
8 co-defendants -- eight or nine co-defendants --
9 and the evidence against Mr. DiLorenzo, and the
10 successive defendants in the second trial, was only
11 minimal, and did not involve the same type of
12 evidence and the same volume of evidence that the
13 first trial against the nine other co-defendants
14 did. He was peripherally involved.

15 THE COURT: You are going to have to speak
16 slower. It isn't fair to this young lady.

17 THE INTERPRETER: Could you state it again?

18 MR. BUCKLEY: So Mr. DiLorenzo, your Honor,
19 was found to be minimally, or very smally involved.
20 And that was one of the bases for the Court of
21 Appeals saying in that case that it was permissible.

22 But they did cite the other cases on the fact
23 that a judge should not sit in a new trial
24 situation, and discussed the propriety of doing it.

25 There is no Second Circuit case that I could

1 find that says a judge cannot do it, but in
2 DiLorenzo they differentiate it from the new trial
3 situation, because they said the quantum of
4 evidence and the type of case against that
5 successive defendant was much different from that
6 that the judge heard in the first case against a
7 number of co-conspirators.

8 And also in that case the judge, of course,
9 had not sentenced the man before, or violated his
10 probation before.

11 THE COURT: How long has this case been
12 pending?

13 MR. BUCKLEY: Since July, your Honor. But,
14 of course in July your Honor had not sat on the
15 first trial of the co-defendant.

16 THE COURT: And this case was originally
17 scheduled for October or September?

18 MR. BUCKLEY: I believe it was scheduled while
19 I was on trial in the bakery case.

20 THE COURT: And it was severed when?

21 MR. BUCKLEY: It was severed in late July.
22 But your Honor did not sentence Mr. Ortiz until
23 October, or maybe -- no, I think it was October,
24 your Honor.

25 THE COURT: Anything further?

1 MR. BUCKLEY: No, your Honor.

2 THE COURT: Motion denied.

3 MR. BUCKLEY: Thank you, your Honor.

4 (Whereupon the proceedings in chambers were
5 concluded.
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1 A Apartment house.

2 Q Now, who else, if anyone, was with you when you saw
3 Kiki Melendez that day?

4 A Mr. Lopez.

5 Q That is Luis Lopez, correct?

6 A Yes.

7 Q What was your purpose in being or going to 15
8 Cabot Street that day?

9 A We wanted to locate Frankie Melendez.

10 Q For what purpose?

11 A To see if we could purchase some narcotics from
12 him.

13 Q What kind of narcotics were you looking to buy?

14 A Cocaine.

15 Q And were you looking to buy any particular
16 quantity of cocaine?

17 A Yes, sir, a quarter piece.

18 MR. BUCKLEY: I am going to object again and
19 ask that this testimony be stricken. It involves
20 an attempt to buy from somebody else, who I don't
21 think his name should come up in this case --
22 alleging Kiki Melendez' involvement in the sale of
23 narcotics on February 10th.

24 THE COURT: Will this be tied in?

25 MR. SMITH: It most certainly will be, yes, sir.

1 have no bearing on this conspiracy.

2 THE COURT: I don't know what he is going to
3 say. I can't judge it until I hear it. If it is
4 found to be inappropriate and improper you can ask
5 that the testimony be stricken. I don't know what
6 he is going to say.

7 BY MR. SMITH:

8 Q What conversation took place on February 4, 1976?

9 A Well, we went up to the second floor in the hallway.

10 THE COURT: Who is "we"?

11 THE WITNESS: Mr. Lopez and I -- to the second
12 floor. And there was this young male looking out
13 the window. We asked him for Frankie, and he
14 opened the door to an apartment, and Mr. Kiki
15 Melendez came out and said "Who is asking for
16 Frankie?"

17 And we told him that we were. And he said
18 "Who are you? What do you want?"

19 We told him we were looking to buy a quarter
20 piece from Frankie Melendez.

21 He said "Well, he's not here. Get out of
22 here. How do I know you are not the man?"

23 BY MR. SMITH:

24 Q "How do I know you are not the man?"

25 A Yes.

1 who you guys were" -- or something to that effect.

2 We told him we were buying a quarter piece, and
3 he said "Well, Frankie sold a piece this morning, and he's
4 not here. And whatever he had, he has under lock and key.
5 I have bags."

6 Q Kiki said "I have bags"?

7 A Yes. At this point I had started to walk down the
8 stairs, and I overheard Mr. Melendez say to Mr. Lopez that
9 if he wanted bags to come by himself.

10 MR. BUCKLEY: I object. We still have
11 conversations coming in that don't have any
12 relevance or bearing to the conspiracy between
13 Mr. Ortiz and Kiki Melendez. That deals with
14 Frankie Melendez, and what the men allegedly were
15 looking for.

16 THE COURT: Objection overruled.

17 THE WITNESS: Mr. Kiki Melendez, as I was
18 walking down the stairs, told Mr. Lopez that if he
19 wanted to buy bags he would sell bags, but he
20 wouldn't sell them to me.

21 BY MR. SMITH:

22 Q Kiki Melendez told Luis Lopez that he, Kiki, had
23 bags?

24 A Yes.

25 Q Kiki Melendez told Luis Lopez, in your presence,

1 that he, Kiki, would sell those bags to Luis?

2 A Yes.

3 MR. BUCKLEY: I object to the Government
4 repeating the answer and getting an affirmative.
5 The jury heard what the conversation was.

6 THE COURT: It might be repetitious. I am
7 sure the jury heard it the first time.

8 BY MR. SMITH:

9 Q How far away were you from Kiki Melendez when you
10 heard him say this?

11 A About five, ten feet.

12 Q Did he say this in English or Spanish?

13 A In Spanish.

14 Q Did you have any problem whatsoever understanding?

15 A No, sir, I did not.

16 Q Can you tell us roughly how long this conversation
17 lasted?

18 A About two minutes. No longer than that.

19 Q Did you, in fact, purchase bags of cocaine from
20 Kiki Melendez at that time?

21 A No, sir, we did not.

22 Q Why is that?

23 A Because we were not interested in buying bags; we
24 had established ourselves as drug dealers, ourselves. And we
25 were interested in buying a bulky amount of cocaine.

1 Q Did you have occasion to see Kiki Melendez again?

2 A Yes, the next day on the 10th.

3 Q All right. What I want to do, Mr. Lopez, I want
4 you to take it slowly, and I want you to tell the members of
5 the jury, in as much detail as possible, right from the
6 beginning, everything that happened. Everything that was
7 said, by whom, to whom, on February 10th, at 15 Cabot Street.

8 A 15 Cabot Street, on the 10th, Trooper Valentin and
9 I came in front of the building. We parked the car. I
10 exited the undercover car. I went upstairs to the second
11 floor.

12 There was a woman in the apartment. I asked her
13 for Mr. Frankie Melendez. And she say "He's not here."

14 Then this kid came from upstairs. I hear the
15 foot -- somebody coming down the stairs from third floor.
16 Then he came and asked me what do I want?

17 I say "I want to purchase a quarter piece."

18 THE COURT: You said this kid -- who is that?

19 THE WITNESS: Unidentified fellow in the
20 hallway, you know, looking out, for the cops or
21 somebody.

22 THE COURT: You don't know his name?

23 THE WITNESS: I don't know his name.

24 BY MR. SMITH:

25 Q Do you know the name of that woman that you spoke to?

1 A No.

2 Q All right.

3 A I do not know the name of her.

4 So he asked me what do I want, the kid. I say I
5 want to purchase a quarter piece of cocaine. He said "Look,
6 Kiki is sleeping" --

7 MR. BUCKLEY: Objection, your Honor.

8 MR. SMITH: I would like to make an offer of
9 proof -- perhaps out of the presence of the jury.
10 Perhaps at the side bar?

11 It is relevant under the Second Circuit case
12 law. I will provide --

13 THE COURT: We will excuse the jury for just
14 a few minutes.

15 (In the absence of the jury.)

16 THE COURT: Your offer of proof?

17 MR. SMITH: The offer of proof, your Honor,
18 is that this individual unquestionably was a
19 participant in this conspiracy. This individual
20 whose name is not known to us. The indictment in
21 this case says that Kiki Melendez and Jesus Ortiz
22 combined together, with others unknown to the grand
23 jury.

24 There has been testimony by this witness that
25 he does not know the identity of this person.

1 at about 4:45 p.m. I went into the apartment and
2 talked to a woman. I think she is Frankie and
3 Kiki's mother. I asked if Frankie or Kiki was
4 there, and then a young male came down from the
5 third floor and asked what I wanted. I later saw
6 a photo of Jesus Ortiz, and this is the person who
7 came and talked to me."

8 MR. SMITH: That's correct, your Honor. If
9 Mr. Buckley wants to cross examine Luis Lopez on
10 the basis of that, he is free to do so. But that
11 doesn't have anything to do with whether Mr. Lopez
12 is now allowed to testify to the statements made
13 by that man.

14 THE COURT: Was this young man -- was that
15 young man that came down from the third floor,
16 that you referred to as the kid, did you identify
17 a photo of Jesus Ortiz as being that person who
18 talked to you?

19 THE WITNESS: I was shown so many photos,
20 after all the arrests, just to find out the real
21 name of the people that was involved in the case.

22 THE COURT: You read English, don't you?

23 THE WITNESS: Yes.

24 THE COURT: I want to clarify that, so that
25 we will know what we are talking about. Here is

1 the part I am reading from. The statement has your
2 name on it, right?

3 THE WITNESS: Yes, my name is on it.

4 THE COURT: Did you read it before you signed
5 it?

6 THE WITNESS: No.

7 THE COURT: You didn't?

8 THE WITNESS: I don't write no reports.

9 THE COURT: Well, the thing that disturbs me,
10 what you said, "A young male came down from the
11 third floor and asked what I wanted. I asked if
12 Frankie or Kiki was there, and a young male came
13 down from the third floor and asked what I wanted.
14 I later saw a photo of Jesus Ortiz, and this is
15 the person who came and talked to me."

16 I don't know -- was it, or wasn't it?

17 THE WITNESS: It was not Jesus Ortiz.

18 THE COURT: It wasn't?

19 THE WITNESS: It was not Jesus Ortiz.

20 MR. SMITH: May I ask the witness a couple of
21 questions on that?

22 THE COURT: Yes.

23 MR. BUCKLEY: I don't object to Mr. Smith
24 asking questions, but I would like to voir dire on
25 this first, because he said two very interesting

1 things that affect his credibility, which I think
2 your Honor should rule on before your Honor can
3 say whether this goes to the jury or not.

4 BY MR. SMITH:

5 Q The statement that the Judge just read, have you
6 read that before?

7 A No.

8 Q Did you read that in preparation for this trial?

9 A Yes.

10 Q Is that statement correct?

11 A It is a mistake.

12 Q Whose mistake is it?

13 A Whoever wrote that statement.

14 Q Do you know who wrote that statement? Do you recall
15 who wrote the statement?

16 A I believe it was Trooper Tosi.

17 THE COURT: It was witnessed by David Hoyt,
18 and there is a line for Angelo Tosi, but no
19 signature on it.

20 MR. SMITH: Your Honor, that is a photocopy
21 that was made at the time that this witness'
22 signature was blocked out. The statement was taken
23 by Agent Hoyt.

24 MR. BUCKLEY: I beg to differ -- I don't mean
25 to testify, but the signature isn't blocked out. It

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is signed Luis Lopez.

Also, may I point out, your Honor, he read it before he signed it. It is in there, in solid caps. He read both pages, and he swears to it, and he initialed it, and signed his name.

MR. SMITH: At the last trial the Court admitted the testimony that the Government wants to offer right now, absolutely, unequivocally. The fact of the matter is, your Honor, if Mr. Buckley wants Mr. Lopez excused so that I can make my argument out of his presence, I will be more than happy to do that. I would like to argue the reason for the mistake. I would like to make an offer of proof as to the reasons for the mistake.

I would like to put the agent on who took the statement, to explain that it was his mistake, not Luis Lopez.

Luis Lopez testified at Ortiz' trial that he didn't read the statement, and didn't do any paperwork. He just signed the statement, and an agent prepared it.

MR. BUCKLEY: Your Honor, could I just make this response? I agree with Mr. Smith, in the first trial, which your Honor was the Judge at,

1 this did not come up in this context. It is quite
2 obvious why it did not. If Attorney Cramer tried
3 to bring out that it was his client, Mr. Ortiz,
4 who came down from the third floor and told him
5 that Frankie and Kiki were asleep, and then he
6 called him in from the window, he would have been
7 burying his own client.

8 The interests are a little different here.
9 He didn't cross examine on it. I know what is in
10 this transcript; I know it very well. And there
11 is no explanation why this statement was given that
12 way, because Mr. Cramer never went near it,
13 because he would be putting his own client into the
14 case. He would much prefer it to have been an
15 unidentified Puerto Rican male.

16 One of the reasons that I felt Agent Hoyt
17 should be sequestered -- we now have an inconsis-
18 tency that I frankly don't think he knew about
19 until just now. Because I took a look at his face.
20 And now he is sitting here, and he knows about it,
21 and he will be able to tell us how he made a
22 mistake..

23 We are getting in an area, trying to get
24 something in through a person that Mr. Smith now
25 wants to claim is an unindicted co-conspirator, I

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guess. But we don't know who the person was.

The only inference that can be drawn from these remarks -- we have got a witness who says one thing, and then reads it and signs it, and then says it is correct, and now he tells your Honor he didn't even read it.

THE COURT: You will have a good day with it, in cross examination.

MR. BUCKLEY: I will have a good day with it, your Honor, but I would rather not have an unidentified male say that my client was sleeping. I just think it is inadmissible. It is not in furtherance of the conspiracy.

MR. SMITH: It clearly is, your Honor.

THE COURT: In the indictment it says a person, unnamed, and unknown, participated in the conspiracy. It is within the purview of the allegations. So I think it helps your case, rather than hurts it.

MR. BUCKLEY: I think you are correct, but I have got to make a record.

THE COURT: I think it helps your case, rather than hurts it. The Court will overrule the objection and let it in.

MR. BUCKLEY: Thank you, your Honor.

1 THE COURT: Call the jury.

2 (In the presence of the jury.)

3 BY MR. SMITH:

4 Q Mr. Lopez, I believe you just testified before the
5 jury went out that you went into 15 Cabot Street on the 10th,
6 and you spoke to a woman, whom you could not identify, and
7 then you spoke to a man whom you could not identify. And
8 you had a conversation with this man, correct?

9 A Yes.

10 Q Would you tell the members of the jury just what
11 this man said to you and what you said to him?

12 MR. BUCKLEY: I would again object, for the
13 record.

14 THE COURT: Objection overruled.

15 BY MR. SMITH:

16 Q What did he say to you and what did you say to him?

17 A When I told this guy I wanted to buy a quarter
18 piece, he told me that Kiki was sleeping and Frankie was not
19 at home.

20 Q What did you do then?

21 A Then I say okay, and I started to exit the building.
22 When I got to the sidewalk the same guy was at the window,
23 in the hallway. He hollered at me in Spanish to come back.
24 I look upstairs; I saw the guy. I went back in the building.

25 When I got back into the second floor Mr. Kiki

1 Melendez was right there with the guy. Then he asked me
2 what do I want.

3 Q Who asked you?

4 A Mr. Kiki Melendez.

5 Q All right.

6 A I told him I wanted to purchase a quarter piece.
7 He say "Look, all I got is bags. My brother, Frankie, just
8 sold a piece this morning. He got some more stuff, and it
9 is under lock. And I don't have the key. So if you want to,
10 you know, buy bags, okay. I got 15 bags left. I give it
11 to you for \$12."

12 I say "How much is amount of money?" He say "\$180."

13 I say "Okay."

14 I went out of the building again. I went to
15 Trooper Valentin's undercover car, and I explained Trooper
16 Valentin the whole situation. And he say "Okay, here's the
17 money." He give me \$180.

18 I left the car again and went inside 15 Cabot
19 Street, on the second floor. I met with Mr. Kiki Melendez
20 in the second floor again. And then we went to the third
21 floor, right apartment. When we get to the third floor
22 Mr. Chombo had the door open.

23 Q Mr. Chombo, who is that?

24 A Mr. Jesus Ortiz.

25 Q Jesus Ortiz?

1 A Yes, waiting. He invited me inside the apartment.

2 Q Who invited you?

3 A Mr. Jesus Ortiz. I went in the apartment, right
4 behind Mr. Kiki Melendez, walked in the apartment.

5 We get into the livingroom, and as soon as I get
6 in there Mr. Jesus Ortiz told a woman who was inside, in the
7 room in the front, told her in Spanish to bring him the dope.

8 The woman came from inside the room and handed
9 Mr. Jesus Ortiz an aspirin bag -- one of those yellow
10 aspirin bags, metal packages.

11 Q An aspirin container?

12 A Yes. He take it from the woman's hand, make a
13 motion -- went into his pocket, turned around, pulled it out
14 again, and then opened the bag.

15 Q Who did this? Who made this motion?

16 A Mr. Jesus Ortiz. He take out 15 bags, tin foil
17 bags, and send it over to Mr. Kiki Melendez.

18 Mr. Kiki Melendez counted the 15 bags, give it to
19 me, and then I took the \$180, give it to Mr. Kiki Melendez.
20 Mr. Kiki Melendez give it to Mr. Jesus Ortiz.

21 After the deal went down I started to walk out of
22 the apartment, Mr. Kiki Melendez told me that it is a panic,
23 nobody has nothing but them in the area; nobody has no dope
24 but them. In other words, that's what they meant by a panic.
25 If I wanted to go see his brother Frankie at the bar --

1 working for them, there is no question about that,
2 the Court will allow that. If there was some
3 quid pro quo, that he was under arrest prior to
4 that and during the time he worked, and they did
5 something for him, you may inquire into that.

6 MR. BUCKLEY: That is all I am going to ask.

7 THE COURT: All right.

8 BY MR. BUCKLEY:

9 Q In that 12 year period, Mr. Lopez, you were working
10 for the police, were you not?

11 A I was giving them information.

12 Q Did you testify in cases?

13 A Yes.

14 Q Did you testify in New York City in cases?

15 A One or two cases.

16 Q During that same period of time you were arrested
17 on a number of occasions; is that correct?

18 A Yes.

19 Q And on some occasions you were convicted of
20 felonies during that period of time?

21 A Yes.

22 Q In fact, in the last 12 years you have been
23 convicted of at least four felonies; isn't that correct?

24 A I know about two. I don't know --

25 Q All right, I will go over them in a minute.

1 Did you, in that 12 year period, cooperate with
2 law enforcement agencies to get consideration, to get a better
3 break, or to get suspended sentences, or a dismissal or
4 nolle on any of these arrests that you had?

5 A No.

6 Q None of the arrests in the last 12 years?

7 A No, I helped because that is the way I felt.

8 Q At the same time you were feeling that way you were
9 convicted of several felonies and sent to federal prison; is
10 that correct?

11 A I was sent at one time to federal prison.

12 Q Did you do any time in state prison?

13 A I was in Lewisburg Penitentiary, released to the
14 federal penitentiary. I sent a writ back to court, and they
15 put me back, because the sentence was illegal, in the same
16 case, for the same charges.

17 Q Mr. Lopez, what I asked you, have you done any time
18 in places other than Lewisburg?

19 A Yes.

20 Q For a felony; isn't that correct?

21 A No.

22 Q Mr. Lopez --

23 A Not that I know of.

24 Q Well, you told us about four felonies that Mr. Smith
25 asked you about: receiving stolen property in 1962; is that

1 correct?

2 A Yes.

3 Q Did you do any time for that?

4 A I don't remember.

5 Q All right, in 1966 you were convicted in New York
6 state for possession of burglar tools. That's within the
7 12 year period you were working for law enforcement, isn't it?

8 A Yes.

9 Q Did you serve time in jail or prison for that?

10 A I don't remember.

11 Q Do you have trouble remembering whether you went to
12 jail or not?

13 A Well, I have been arrested many times, and --

14 Q So many that you can't remember; is that it?

15 A They just put the case away.

16 Q They took it --

17 A Not took the cases away; they just dismissed the
18 cases. They didn't have no evidence.

19 Q Did you do six months in the New York State
20 Penitentiary in New York for possession of burglar tools in
21 1966?

22 A Yes.

23 Q In 1970, within this 12 year period, when you
24 were working for the law enforcement, were you convicted in
25 the State of New Jersey of loitering with intent to steal?

1 A Yes.

2 Q Did you do time for that?

3 A No.

4 Q Why not?

5 A I don't know.

6 Q Had you cooperated both before and after that case
7 in that year with law enforcement agents?

8 A I have been cooperating with the police for a long
9 time.

10 Q Do you recall getting on the stand in a federal
11 case in New York and having a badge on when you testified?

12 A No.

13 Q You don't remember that?

14 A No.

15 Q Were you convicted in 1973, in Federal Court, of
16 interstate transportation of a motor vehicle?

17 A Yes.

18 Q And you did time for that in Lewisburg?

19 A Yes.

20 Q That was in 1973?

21 A Right.

22 Q And you also did time on that case in the State
23 Court in New Jersey, did you not?

24 A State Court, what?

25 Q You were convicted on that same charge in the State

1 Court in New Jersey, in 1973?

2 A Not New Jersey.

3 Q New York?

4 A New York.

5 Q These are the cases that Mr. Smith and you told the
6 jury about this morning; is that correct?

7 A Yes.

8 Q You were also convicted in 1963 and did time in
9 Riker's Island, for violation of your parole, didn't you?

10 A Yes.

11 Q Is that a felony?

12 A I was sentenced under the misdemeanor, to an
13 indefinite time.

14 Q But you signed, when you got out, conditions of
15 parole, didn't you?

16 A Yes.

17 Q And you violated them, didn't you?

18 A Yes.

19 Q And you promised to abide by them?

20 A Yes.

21 Q And you were sentenced for that?

22 A Yes.

23 MR. SMITH: Your Honor, could I have a
24 statement by Mr. Buckley about what his claim is.
25 Violation of parole, affecting honesty?

1 MR. BUCKLEY: Yes. And I will put it in the
2 entire context of the claim: the man admitted he
3 was working for Government agencies.

4 THE COURT: Next question.

5 BY MR. BUCKLEY:

6 Q Were you convicted in 1973, in addition to the
7 motor vehicle charges, were you convicted in Mineola,
8 New York, in 1973, of bail jumping in the first degree,
9 failure to appear, and forfeit your bail?

10 A That was the same case.

11 Q But you were convicted? It was disposed of by
12 plea on the motor vehicle case?

13 A Yes, but I was put back -- it was illegal, when
14 I was sentenced by the federal and the state for the same
15 crime.

16 Q But you were arrested and charged with bond
17 jumping, and your bond was forfeited, wasn't it? Can you
18 remember that, Mr. Lopez?

19 A No.

20 Q Well, do you recall being released on bond on the
21 motor vehicle charges? They didn't hold you in jail until
22 you pled guilty, did they?

23 A I don't remember.

24 MR. SMITH: Your Honor, I object. The witness
25 has been asked if he remembers, and he said no.

1 A Two years.

2 Q When were you released from Lewisburg?

3 A In 1974, the end of 1974.

4 Q Do you recall being charged in New Haven with
5 threatening and criminal trespass, and having Trooper Tosi
6 go down and take care of those charges for you?

7 A That was nolloed.

8 Q That was nolloed?

9 A Yes.

10 Q That's your testimony, the case was nolloed?

11 A Criminal trespassing was nolloed.

12 Q But the threatening charge wasn't, was it?

13 A No, the threatening was not.

14 Q That was in November of 1975; is that correct?

15 A Yes.

16 Q And at that time you were working for the D.E.A.
17 and the Connecticut State Police?

18 A Yes.

19 Q And you said "Trooper Tosi, will you come down and
20 help me out on this case?"

21 A I didn't say that.

22 Q What did you say to him?

23 A I told him because I was working in several cases
24 with them, I told him to let me know -- I called him and let
25 him know where I was, that I was locked up.

- 1 Q What happened?
- 2 A Because I was working with them in several cases.
- 3 Q What happened?
- 4 A What happened that case?
- 5 Q Yes.
- 6 A I was coming up from the street. It was dark, at
7 night --
- 8 Q No, what happened on the case. When you called
9 Trooper Tosi and told him you were locked up?
- 10 A I don't know. I was bailed out by my wife.
- 11 Q All right. What happened on the case after?
- 12 A They gave me probation.
- 13 Q Trooper Tosi went to see the prosecutor for you?
- 14 A He went down there.
- 15 Q And he got a suspended sentence, right?
- 16 A I got a year probation.
- 17 Q You are on probation now?
- 18 A No, finished.
- 19 Q It is over with?
- 20 A Yes.
- 21 Q It just ended?
- 22 A December.
- 23 Q You also got a nolle, didn't you?
- 24 A Excuse me?
- 25 Q You got a nolle of the other case, criminal trespass?

1 A Yes.

2 Q Was that the same case that Trooper Tosi went to
3 speak on your behalf?

4 A I don't know if he is ever down there.

5 Q You understand what a nolle is, Mr. Lopez?

6 A I don't know.

7 Q When they nollied the case, if you didn't behave
8 yourself it could be reopened by the prosecutor any time
9 within the next 13 months?

10 A I just know now.

11 Q You didn't know then?

12 A No.

13 Q You don't recall being asked that question before
14 you testified in court?

15 A No.

16 Q This is the first time you ever heard that?

17 A Yes.

18 Q How many times in the last 12 years when you found
19 yourself locked up, and you were working for law enforcement,
20 did you call a law enforcement person, such as Trooper Tosi,
21 and ask for some help?

22 A I never asked for no help.

23 MR. SMITH: That's not relevant. The thing
24 that is relevant is what happened during the period
25 from October, when he began to work for the

1 Connecticut State Police, up to April 1st, when he
2 ended? That is the thing really in issue.

3 THE COURT: Well, why don't you ask him that
4 first? Then say was it common practice prior to
5 that to do the same thing? Let him tell you.

6 BY MR. BUCKLEY:

7 Q When you got in trouble in the prior 12 years,
8 before you started working for the Connecticut State Police
9 here, and the D.E.A. here, when you got in trouble would you
10 call up the people you were working for and try to get them
11 to help you?

12 A I call my family and let them know about it. And
13 if they contact them and wanted to help me out, it is up to
14 them. I never asked for no help when I was in trouble in
15 Lewisburg, on my own. I never make bail, and went to jail.

16 Q But in the prior 12 year period were there
17 occasions after you called your family when the agencies you
18 were working for, someone would help you out?

19 A If they come and help me I accept it.

20 Q But they did come and help you out, didn't they?

21 A Yes.

22 Q How many cases in the last 12 years did you get out
23 of because you were working for law enforcement agencies?

24 A I don't know. I don't remember.

25 Q Can you count that high?

1 A I can't remember.

2 Q Was it more than six?

3 A I don't know.

4 Q Was it more than 12?

5 A I don't know.

6 Q But you did get out of cases, didn't you? You had
7 charges dismissed and nolloed, and suspended sentences,
8 because you testified against people; isn't that correct?

9 A No.

10 Q No? Because you gave them information? That's not
11 correct?

12 A Well, I give them information.

13 Q And when you got on the stand here today, inside,
14 did you expect and hope that if you get in trouble in the
15 future you will be able to call on Agent Hoyt or Trooper Tosi,
16 or Trooper Valentin, and say "I'm in trouble again; help me
17 out, because I am testifying here against Mr. Melendez"?

18 A No.

19 Q Don't you know if you get in trouble here you can
20 call these people?

21 A No, I never asked for no help. I was just
22 threatened a little while ago to get killed by this man.
23 Did I say that to anybody? He just threatened me. He was
24 going to --

25 MR. BUCKLEY: Can I ask the witness to stop?

1 to the prosecutor?

2 A Yes, I know.

3 Q Now, have you had any trouble with the law anywhere
4 since that time?

5 A Not that I remember.

6 Q Do you have trouble remembering when you had
7 trouble with the law in the last 12 months?

8 A I had that threatening case.

9 Q Anything since then, here, or anywhere else?

10 A In New Haven.

11 Q Have you been arrested for anything in the last
12 12 months since the threatening case?

13 A Yes, I think I was arrested one more time.

14 Q While you were working for these people? Isn't
15 that correct?

16 A Yes.

17 Q What were you arrested for?

18 A Oh, yes, impersonating a police officer.

19 Q Impersonating a cop, right?

20 A Yes.

21 Q Where did you do this?

22 A Where do I do that?

23 Q Where?

24 A In New Haven.

25 Q Did you have a badge then?

1 A I had the pin from the police station, my I.D.

2 Q From your detective association?

3 A Yes.

4 Q All right, what did you do? Tell us about that.
5 When did it happen?

6 A I don't remember exactly the day it happened.
7 I know I was in my cousin's house, and we were fixing the
8 plumbing. The man downstairs was living alone in the house,
9 on the first floor apartment. He come upstairs and say
10 "Who rented this apartment?" I said my cousin rented it.

11 He say "You know, I don't want no Spics, no
12 Spanish people in here." I say "No?"

13 Then he started arguing with me, "Get out of here,"
14 chasing me out.

15 So, he approached, you know, to hit me with a
16 stick. And then I grabbed the stick to take it off him.
17 He calls the cops.

18 Then the sergeant came over, and I told him
19 "Look, put them on the side -- look, I'm working for this,
20 and, you know, so and so."

21 They say "You got any identification?" I say yes,
22 and I give him my card, you know, from the association.

23 Q That wasn't from the D.E.A. or the Connecticut
24 State Police though?

25 A Excuse me?

1 Q That identification wasn't from the D.E.A. or the
2 Connecticut State Police?

3 A No, no, no. Then he say "Well, I have to take you
4 in for impersonating a police officer."

5 I said "I never told you I'm a police officer."
6 He said "You got this I.D. This is no good."

7 I said "No good?" He said "Well, we will see
8 about that." Then he locked me up.

9 Q This is New Haven?

10 A Yes, the next morning I walked out.

11 Q Walked out of where?

12 A Out of criminal --

13 Q Someone bonded you out?

14 A Not that I know.

15 Q Was the case dismissed?

16 A Yes, the case was dismissed.

17 Q Did you make any phone calls before you got out
18 the next morning?

19 A No, I had no chance to make no phone calls, nothing.
20 I just went and spoke with the public defender in there,
21 and he told me not to worry about it; he knows me. And he
22 went and talked to the Judge.

23 Q The public defender knew who you were?

24 A Yes.

25 Q He represented you?

1 A Yes.

2 Q Did he tell the Judge how you are working for
3 these agencies? And is that why you got out?

4 A I don't know. He went to the back and speak to
5 the Judge and prosecutor.

6 Q Did you tell the public defender you were working
7 for these agencies?

8 A Yes, I told him.

9 Q You don't know why the case was dismissed?

10 A Just dismissed the case.

11 Q But in any event you were arrested again while you
12 were working for these agencies?

13 A I was arrested again?

14 Q Yes, that one time, for impersonating?

15 A Yes, that one time.

16 Q Did you tell Agent Hoyt about that?

17 A No.

18 Q Did you tell Mr. Smith?

19 A No.

20 Q Did you tell Trooper Tosi?

21 A No.

22 Q Did you tell any of the people you were working for?

23 A No.

24 Q You haven't been arrested since then for anything;
25 is that correct?

1 A No.

2 Q Now I believe you testified, I think you said you
3 were paid for your time and expenses; is that correct?

4 A Yes.

5 Q And in this period of time, from October of 1975
6 until April of 1976, you were paid about \$3,500; is that
7 correct?

8 A Yes.

9 Q You have been paid since then, haven't you?

10 A Yes.

11 Q By the Connecticut State Police?

12 A Yes.

13 Q How much have you been paid from April up until now?

14 A I don't know. They got the figures, you know.
15 I don't know.

16 Q Would the sum of about \$500 sound about right,
17 from the Connecticut State Police?

18 A I don't know.

19 Q Did the D.E.A. agents pay you anything since April
20 of 1976? From April of 1976?

21 A Yes.

22 Q They continued to pay you also?

23 A Yes.

24 Q So your answer that you have been paid \$3500 while
25 you worked in Connecticut is not accurate; you have been paid

1 more than that, haven't you?

2 A Well, from October to April that is what I got.

3 Q You testified under oath here in Federal Court in
4 another trial, haven't you?

5 A Yes.

6 Q Did you get paid after you testified in that case?
7 Did you get expenses?

8 A Yes, that's what they paid me, my expenses and my
9 time.

10 Q Did you get a witness fee in that case?

11 A When?

12 Q Did you get a check from the United States Marshal
13 for a witness fee that every witness gets?

14 A Yes.

15 Q Did you get more above and beyond the witness fee?
16 In the Ortiz case, how much more money did you get besides
17 the witness fee, for testifying in that case?

18 A I don't know.

19 Q Now, do you expect to be paid in this case for
20 testifying also, in addition to the witness fee?

21 A Well, they pay me for the day I spend here.

22 Q Why, are you losing time from another job?

23 A Well, like I say, I'm a mechanical expert, and I
24 got work to do.

25 Q Are you employed somewhere else now, other than as

1 Q How much were you paid by these agencies to
2 testify in that trial?

3 A I don't know. For the days I spent here.

4 Q Well, the Government paid you to be a witness,
5 didn't it? The U.S. Marshal sent you a check for mileage
6 and witness fees?

7 A Yes, that's all I got.

8 Q From the Marshal?

9 A Yes.

10 Q Did you get any money from the D.E.A. or State
11 Police after you testified in this case?

12 A Yes, I have been getting money from them, but I
13 don't know how much.

14 Q You didn't get it from the Marshal; you got money
15 above and beyond the witness fee and the mileage that any
16 witness gets, didn't you?

17 A Yes, some of the cases we were working on.

18 Q Mr. Lopez, you understand my questions, don't you?

19 A Yes, I understand your questions.

20 Q Did you get paid other moneys besides what they
21 gave you for being a witness fee?

22 A Yes. I said yes.

23 Q You testified in State Court against Angel Rosado,
24 didn't you?

25 A Yes.

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1 Q Did you get paid in that case by the Connecticut
2 State Police, in addition to witness fees and mileage?

3 A Yes.

4 Q You expect to get paid here today for testifying
5 against Mr. Melendez, don't you, in addition to the witness
6 fee and mileage?

7 A If they want to pay me it's okay. I got to make a
8 living. I got my kids to support, and I got to pay rent.

9 Q How many kids have you got?

10 A One kid, but I got to pay rent, and I got other
11 things to do.

12 Q You only have one kid to support?

13 A Yes.

14 Q And you do expect to be paid today?

15 A It is up to them. If they want to pay me, good.
16 If they don't pay me, good. It makes no difference to me.

17 Q And I believe you told us that you got paid for your
18 time and expenses, for the amount of time you put in; is that
19 correct?

20 A Yes.

21 Q And the number of people, the amount of information
22 didn't mean anything; it was the amount of time?

23 A The amount of people in the cases don't mean
24 anything. It can be only one. If I spent ten days with one
25 person, I get paid for my time and my expenses.

1 us that there was a kid who came down from the third floor;
2 is that correct?

3 A Yes.

4 Q All right. And he asked you what you wanted?

5 A Yes.

6 Q And you didn't know who that kid was, right?

7 A I don't know.

8 Q You say a kid; you mean a younger person?

9 A Younger, about 14 years old, or something like that.
10 More or less -- I don't know. Looked real young to me.

11 He was always at the window on the second floor,
12 watching out for the cops going by.

13 Q How do you know that to be a fact?

14 A I was told by other people in the street.

15 Q He was sitting there?

16 A Yes.

17 Q And you saw him when you went back on the 10th?

18 A Yes.

19 Q All right. And he is the one that you are now
20 testifying under oath that said Frankie is away and Kiki is
21 sleeping?

22 A He was the one who told me about it.

23 Q Okay. And then you went out of the house -- this is
24 the first time you were in the house, right, on the 10th?

25 A Yes.

1 Q You left and went back to the car, and on your way
2 out this unidentified kid yelled out the window?

3 A Yes.

4 Q What did he yell?

5 A Told me in Spanish to come back.

6 Q Now, as part of your duties as an informant for the
7 D.E.A. and the State Police, you have to reduce to writing
8 statements as to what you say happened, don't you?

9 A I told them what happened.

10 Q You tell the officers, don't you?

11 A Yes.

12 Q And in some instances you do that because you have
13 to have a report of the case; is that correct?

14 A I was advised all the time, you know, to, you know,
15 so they can take notes about it.

16 Q You try to remember as much as you can?

17 A Yes.

18 Q And be accurate about it?

19 A Yes.

20 Q And then you tell the officers and they write it
21 down in a report? Or in some cases put it in a statement that
22 you read and sign; isn't that correct?

23 A Yes.

24 Q And you have to do that so you'll be a better part-
25 time employee, and a better witness; isn't that correct?

1 A I don't know if for that, no.

2 Q You have gone over these statements before you
3 testified here, haven't you?

4 A Yes.

5 Q And you go over them before you testified in other
6 cases? Isn't that correct?

7 A Yes.

8 Q Do you recall sitting down with the agents and
9 telling them what happened in this case?

10 A I sit down with Angelo Tosi, and I told him.

11 Q Told him what happened?

12 A Told him what happened. He took notes. From there,
13 I don't know.

14 Q Do you recall sitting down on February 19th, some
15 nine days later, with Trooper Tosi and Agent Hoyt, and telling
16 them again what happened, and giving them a signed, sworn
17 statement?

18 A Yes.

19 Q And you testified about this set of facts in court
20 before, have you not, in July, in another trial?

21 A Yes.

22 Q You testified before a federal grand jury in these
23 cases, did you not?

24 A Yes.

25 Q Now, at the time part of your job was to remember as

1 best you could what happened; is that right?

2 A Yes.

3 Q Do you think your memory after you came out of
4 that apartment, or within the weeks after you came out of
5 the apartment was better as to the details, as to what you
6 told these men to write down, than it is now?

7 A I think my memory is better now, because I went to
8 the report.

9 Q Why is it better? I didn't hear you.

10 A Now it is better.

11 Q Why?

12 A Because the day I testified in front of the grand
13 jury I was testifying in several cases. And I never went to
14 the report, or nothing.

15 Q I see. Was it better when you gave the statement
16 on February 19th to Mr. Hoyt and Trooper Tosi, or were you
17 mixed up that date, that you had so many cases?

18 A I was a little confused.

19 Q Did you sign a two page statement that day, that you
20 read and swore to?

21 A Yes, I signed it.

22 Q It says right in there that you read and swore to it?

23 A Yes.

24 Q Mr. Lopez, showing you Government's Exhibit 2 for
25 identification, would you look at the second page and tell me

1 if that is your signature at the bottom of Page 2?

2 A Yes, it is.

3 Q Written right above your signature it says "I have
4 read this statement consisting of two pages, initialed the
5 first page, and all corrections, and signed the second page."
6 Isn't that correct?

7 A Yes.

8 Q That is in solid, typewritten capital letters, isn't
9 it?

10 A Yes.

11 Q Then it says "This statement is true and correct,
12 to the best of my knowledge. No threats, force or promises
13 of rewards have been made to me. And this statement is
14 freely and voluntarily given." Is that correct?

15 A Yes.

16 Q And you read it before you signed it, didn't you?

17 A I didn't read it.

18 Q You didn't?

19 A No.

20 Q Didn't you initial the pages, like it says right
21 above your signature, that you did?

22 A I don't remember.

23 Q Was it witnessed by Agent Hoyt?

24 A I don't remember.

25 Q But you signed your name and you said "I read this

1 statement consisting of two pages. I initialed all the
2 corrections. It is true and correct, to the best of my
3 knowledge"?

4 A I have signed many statements.

5 Q But that's your signature, isn't it?

6 A Yes, this is my signature.

7 Q And this is a detailed statement of what happened
8 on the 9th and 10th of February, isn't it?

9 A Well, I told them what happened in the case, and
10 they take notes. After that they typed it. I never write
11 or typed no notes or nothing. They do it. They do the work.

12 Q But you put your name on a piece of paper where it
13 says "I subscribe to it. I read it, and it is correct" isn't
14 that correct?

15 A I signed it.

16 Q All right. And on Page 1 of that statement, if you
17 look at it, do you remember telling these agents that the man
18 who called you back into the building, and that the man who
19 told you that Frankie was not there and Kiki was sleeping,
20 was Jesus Ortiz, the other defendant in this case? And the
21 way you know that is because you identified him from
22 photographs?

23 A That's got to be confusing with them, because I
24 only identified Mr. Jesus Ortiz -- I didn't identify him on
25 the picture, but it was to find out his legal name.

1 Q Do you recall -- this is your statement. It is in
2 the first person. It says "I" all the way through, doesn't
3 it, Mr. Lopez?

4 A Yes.

5 Q Do you recall saying "I asked Frankie if Kiki was
6 there. And then a young male came down from the third floor
7 and asked what I wanted. I later saw a photo of Jesus Ortiz,
8 and this is the person who came and talked to me."

9 A It is there, but it didn't happen that way.

10 Q All right. Do you recall saying then "I told him
11 I wanted a quarter piece and he said I would have to come
12 back because Kiki was sleeping and Frankie was" --

13 THE COURT: You are reading from something
14 that is not an exhibit here, Counselor.

15 MR. BUCKLEY: It is his statement, your Honor.
16 He admitted it.

17 THE COURT: Is it a full exhibit?

18 MR. BUCKLEY: No, I don't think so.

19 THE COURT: Do you want to make it a full
20 exhibit?

21 MR. BUCKLEY: Certainly.

22 THE COURT: Let's mark it, and then you can
23 read the whole of it.

24 MR. SMITH: Before that I would like to have
25 a voir dire.

1 MR. BUCKLEY: Your Honor, my claim would be
2 that I don't have to move to make it a full
3 exhibit. I'm reading from something that he has
4 affirmed and said is his. And I am asking does
5 he recall saying it.

6 THE COURT: That isn't the way you were doing
7 it, Counselor. You were reading the exhibit.

8 MR. BUCKLEY: I have to read from it, your
9 Honor, to tell him what I am claiming he said.
10 I can't memorize it.

11 THE COURT: Well, if you stated it in a
12 different way it might be permissible: Did you
13 ever state to Mr. Tosi, or to the other agent --
14 whatever his name is -- such and such?

15 MR. BUCKLEY: All right.

16 THE COURT: Then if he denies it, fine. But
17 just to start reading the statement and saying
18 "I don't want it in evidence," that is objectionable.

19 MR. BUCKLEY: I have no objection to it being
20 in evidence, your Honor. I just thought the way I
21 was doing it, I thought I was asking "Do you recall
22 saying it?"

23 BY MR. BUCKLEY:

24 Q Do you recall telling Officer Tosi or Agent Hoyt
25 that Mr. Ortiz told you that Kiki was sleeping and Frankie

1 was not there?

2 A I say I was --

3 Q Do you recall?

4 A I say it was a young guy. I don't know him.

5 Q Do you recall telling Agent Hoyt and Trooper Tosi
6 "When I got outside Ortiz called out the window and told me
7 to come back up."?

8 A I say the same kid that I found on the second
9 floor called me.

10 Q You don't recall telling them what is in this
11 statement that you read and signed?

12 A I never mentioned no names, because I know
13 Mr. Jesus Ortiz by nickname.

14 Q Do you recall then saying that after you said
15 Ortiz called you back in, that you went back up and met
16 Kiki on the third floor?

17 A That statement is wrong.

18 Q But you signed it? You signed your name to it and
19 said you read it, and it is correct, didn't you?

20 A I signed it, but I don't read it.

21 Q And that Ortiz called you out the window? You
22 don't remember that?

23 A Ortiz never called me out the window. That other
24 kid was the one who called me out the window, to come back.

25 And I went back inside. When I got back inside Mr. Kiki.

1 Melendez was right on the second floor with him.

2 Q So it says in here the third floor; that is
3 incorrect, too? Do you recall later in that statement
4 saying I went back in -- and telling the police officers
5 that Ortiz told you to come up to the third floor?

6 A Mr. Melendez here came to the third floor.
7 Mr. Ortiz was at the third floor, sitting with the door open.

8 Q You don't recall telling the agents that you went
9 back in when Ortiz called you --

10 A Ortiz never called me. That kid, that unidentified
11 man was the one who called me. Ortiz never called me out
12 the window. They got a lookout guy there. I later found
13 out it was his little brother.

14 Q I thought you told us you didn't know who it was?

15 A Ortiz never called me out the window. That kid
16 called me out the window. I went back in the building. When
17 I went in the building, this gentleman right here worked with
18 him; set the price with him.

19 Then I went back in Trooper Valentin's car. I said
20 I got the money, and I went back. And back up to the third
21 floor. And went to Mr. Ortiz' apartment. And that was when
22 I closed the deal with him, Kiki, with the price, \$12 a bag --
23 \$180. And he invited me upstairs. Mr. Ortiz had the door
24 open. I went inside, and the deal went down.

25 At no point did Mr. Ortiz -- but this gentleman,

1 right here -- I put the money in this gentleman's hands,
2 and he pass it to Mr. Ortiz. That's the way the deal went
3 down. No other way. Mr. Ortiz never called me out the
4 window. Mr. Ortiz was upstairs.

5 Q Mr. Lopez, on Government's Exhibit 2 for
6 identification, the two page document -- that is your
7 signature?

8 A It is my signature, but that statement is wrong,
9 because I never say that.

10 Q You signed a piece of paper that says you read it?

11 A I signed it without reading.

12 Q And it is incorrect?

13 A I signed it without reading it.

14 Q And you didn't read it, and it wasn't correct?

15 A I didn't read it.

16 Q And that went in the case file against Mr. Melendez,
17 the man that you are testifying against here today, didn't it?

18 A I testify against him because the deal was through
19 him.

20 Q Why didn't you read the statement?

21 A Because I trust the police department. I trust
22 these people. I didn't know they was going to write
23 something in there -- let them clear it up. The one
24 supposed to clear this out is not me; it is the people who
25 write these statements.

1 Q But you swore to a statement, and signed it, and
2 you said it is correct, didn't you? Yes or no?

3 A I signed it, yes.

4 Q That statement went in the file that made a case
5 against this man, didn't it? Didn't it?

6 A Yes.

7 Q And you now want to say it is not correct, and you
8 lied?

9 A Because it is not there. I don't say I lie.

10 Q You didn't lie then when you said you read it?

11 A I didn't lie then. I told them what happened.
12 They wrote the statement, I no write it.

13 Q You put your name on it?

14 A I put my name, but I don't write the name.

15 MR. BUCKLEY: Your Honor, I move for the
16 original of this statement.

17 THE WITNESS: I never write no statement.

18 MR. SMITH: I don't know why Mr. Buckley
19 moves for the original.

20 THE COURT: Is the original available?

21 MR. BUCKLEY: Each page is initialed by the
22 man, your Honor, to indicate that he read it.

23 THE COURT: Do you have the original copy?

24 MR. SMITH: Not that I am aware of.

25 MR. BUCKLEY: The agents should have an

1 original copy. I'm familiar enough with their
2 procedures. Unless it has been destroyed. But he
3 initialed it; it is not on this Xerox.

4 THE COURT: Where was the Xerox from?

5 MR. SMITH: I assume there was an original
6 at one time, your Honor. I don't know where it is.
7 I will ask the agent -- do you know where it is?
8 Would you get it?

9 THE COURT: Do you need it now?

10 MR. BUCKLEY: I could keep going, your Honor,
11 but I would like to have it.

12 THE COURT: Proceed until 3:30, and we will
13 have it at the recess.

14 BY MR. BUCKLEY:

15 Q This language, right above where you signed, is
16 in solid capitals. It says that you initialed the
17 corrections on the first page, doesn't it?

18 A Yes.

19 Q And you signed the second page, and it is true and
20 correct?

21 A Something in there I never said.

22 Q There is a lot in there --

23 A Let the people who write it clear it. I'm not a
24 police officer; I can't clear it up.

25 Q - There is a lot in there that you never said?

1 it out of his pocket? Is that your testimony?

2 A I believe that's what he meant.

3 Q The dope that you bought you felt came from Chombo?

4 A The dope, when he hollered to the woman in the
5 room to give him the small aspirin box, and I came to
6 Mr. Melendez' hands -- from Mr. Chombo to Mr. Melendez to me.
7 And that's the same way the money went around.

8 Q In addition to giving statements to the agents,
9 soon after the buys that you were involved in, you also went
10 before a grand jury, to decide whether or not to indict
11 Mr. Melendez; isn't that correct?

12 A Excuse me?

13 Q Did you go before a grand jury?

14 A Yes.

15 Q So they could decide whether to indict someone else,
16 such as Mr. Melendez; is that correct?

17 A Yes.

18 Q And you testified against Mr. Ortiz and
19 Mr. Melendez on March 24, 1976, before a federal grand jury
20 in this building, didn't you?

21 A Yes.

22 Q And it is your testimony that you remember it better
23 now than you did then?

24 A Yes.

25 Q You were confused then?

1 A I didn't have the report. No nothing. They called
2 me, I have to come to court. And I just came, and I did the
3 best that I can.

4 Q That was about less than two months after you made
5 this buy, right?

6 A I believe so.

7 Q Of course you were confused when you signed the
8 statement? And you didn't read it, also, right?

9 A Yes.

10 Q Because you had so many cases?

11 A Yes, I testified in several cases.

12 Q Is that why you didn't read it, and you signed it
13 and said it was correct?

14 A No.

15 Q Of course you were in front of a grand jury and
16 you had to raise your right hand and swear that you were
17 telling the truth, didn't you?

18 A Yes.

19 Q And you did that, didn't you?

20 A Yes.

21 Q You were asked a question --

22 A Yes.

23 Q -- by Mr. Smith?

24 A Yes.

25 Q And of course you only can answer the questions he

1 asked you; is that correct?

2 A Yes.

3 Q Do you recall telling the grand jury, in answer to
4 Mr. Smith's question, "Now you actually obtained those 15
5 bags from Mr. Ortiz, correct, Chombo?" That is Mr. Smith
6 asking the question, and you said "Right"?

7 A Because the dope come --

8 Q Do you recall that, yes or no?

9 A Yes. The dope come around from him.

10 Q You will have a chance -- just wait. And do you
11 recall telling the grand jury that Chombo had the stuff
12 upstairs? That is when the transaction went down?

13 A Yes, because --

14 Q Yes or no?

15 A Yes.

16 Q Do you recall --

17 A Mr. Melendez took me upstairs.

18 Q Do you recall Mr. Smith's question, the specific
19 question: "What I am getting at is this: Mr. Ortiz,
20 Chombo, handed it to you, the 15 bags?"

21 "Answer: Yes, he handed me the 15 bags."

22 "Question: Who handed the 15 bags to Mr. Ortiz?"

23 "Answer: Oh, his wife."

24 "Question: Okay. And did you see this?"

25 "Answer: Yes, was right in my presence."

1 Do you recall that?

2 A Yes.

3 Q "And you paid whom?" That is the question.

4 "Answer: I paid Chombo."

5 A Yes.

6 Q "And Kiki was there when you paid Chombo?"

7 "Answer: Yes."

8 "Question: How much money did you pay?"

9 "Answer: I give him \$190."

10 You recall that, don't you?

11 A Yes.

12 Q Were you confused then?

13 A I was confused, like I say.

14 Q Did you tell Mr. Smith you were confused?

15 A Yes, I told him.

16 Q You told him that day in the grand jury "I'm
17 confused; could I have a little time to think about it?"

18 A I remember I went in and I started to testify in
19 the case, and then they had to put me out, and I get upset
20 again.

21 Q And they pulled Valentin out that day, didn't they?
22 They pulled Valentin out and put you in, instead, because you
23 made the buy, and Valentin didn't? Do you remember that?

24 A Yes.

25 Q You didn't anywhere in these grand jury transcripts --

1 you didn't say "Wait a minute, I can't remember"? Is there
2 anything in here? You have read these, haven't you?

3 A I did the best I could.

4 Q Have you read these?

5 A At that time, no.

6 Q Have you read them since then?

7 A At that time I never went through the records.

8 Q Have you read these since you testified before the
9 grand jury? The grand jury minutes?

10 A I went here through some reports.

11 Q Did you read your testimony before the grand jury?

12 A Yes.

13 Q You have discussed it with Mr. Smith, haven't you?

14 A Yes, been in the office.

15 Q Because it is somewhat inconsistent? You said
16 Mr. Chombo gave you the dope, and you paid him the money?

17 A Well, the way that the dope comes around, it comes
18 from him.

19 Q That is not what you told the grand jury, is it?

20 A I didn't have a chance to explain it. The dope
21 come from Mr. Chombo to Mr. Melendez here, and to me.

22 Q And you did get to read these? Didn't you examine
23 the grand jury minutes of your testimony?

24 A Yes.

25 Q Does it show in here any pauses, that you were

1 waiting, trying to remember the answer? Or you said to
2 Mr. Smith "Let me have a little time to think about it"?
3 Does that show in here?

4 A I don't know.

5 Q "And was Mr. Melendez there?" And you said "Yes."
6 You didn't say "Yes, he handed the money and the dope," did
7 you?

8 A He was there. He was the one that took me upstairs.

9 Q "Now you actually obtained those 15 bags from
10 Mr. Ortiz, correct, Chombo?"

11 "Right."

12 That is a pretty specific question?

13 A Yes, because the dope comes from him, from his
14 hands.

15 Q "What I am getting at is this" -- this is
16 Mr. Smith talking, specifically: "What I am getting at, is
17 this: Mr. Ortiz, Chombo, handed it to you, the 15 bags?"

18 "Answer: Yes, he handed me the 15 bags."

19 That is your answer. You didn't explain that to
20 the people in the grand jury room, did you?

21 A I never explained it. I would have cleared it up
22 and explained it, the way it comes around, if they asked me.

23 Q And then the question by Mr. Smith: "And you
24 obtained these bags of cocaine directly from Chombo in
25 Kiki's presence?"

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"Answer: Right."

"Question: And you paid whom?"

"Answer: I paid Chombo."

"Question: And Kiki was there when you paid Chombo?"

"Answer: Yes."

"Question: How much money did you pay?"

"Answer: I give him \$190."

That is wrong, too? It was \$180, wasn't it?

A It was \$180.

THE COURT: Counsel, it is now 3:30. We will take a short recess.

(Recess.)

BY MR. BUCKLEY:

Q Mr. Lopez, I believe you testified before that you knew when you were in the grand jury room that you were under oath; is that correct?

A Yes.

Q You don't recall asking Mr. Smith at any time for more time, or telling him that you didn't understand the question, or telling him you were confused? Do you remember saying that to him in the grand jury at any time?

A I never told him that I was confused.

Q Mr. Lopez, you told us that you started working for the federal agents and the Connecticut State Police in

1 October and November of 1975; is that correct?

2 A Yes.

3 Q All right. Now, why did you start working there?
4 What caused you to appear on the scene to start to work on
5 drug cases for the State of Connecticut?

6 A I liked -- since I was a child, you know, to work
7 with the police department. The man who really raised me up
8 in this country was a detective for 30 years, Mr. J. McCarthy.

9 And because when I was a kid, you know, if it were
10 not for my record, I would have been a detective or a member
11 of the Government by now.

12 Q Let me ask you this. I want to be a little more
13 specific, if I can. What, around the time of October or
14 November of 1975, what caused you to go -- did you go to the
15 police station -- maybe I should ask it that way. Did you go
16 to them and say "Here I am, Luis Lopez; I want to work for
17 you people"?

18 A I went to the New Haven Police Department.

19 Q You went there?

20 A Yes, because there was a big counterfeiting case
21 going around, coming from Springfield, Massachusetts.

22 Q Counterfeit money?

23 A Yes, going from Worcester, Massachusetts, and then
24 Hartford, then New Haven. And I find out the guys, the people
25 doing this.

1 Q You just walked into the police station and offered
2 them this information?

3 A Yes.

4 Q And what did they do, call up the D.E.A.?

5 A No, they called the State Police.

6 Q But you didn't have any problem with the law, or
7 anything that caused you at that time to go and offer your
8 services?

9 A Not at all.

10 Q You weren't arrested?

11 A Not at all.

12 Q You hadn't been caught by the police doing anything
13 for which they did not arrest you, and let you go because --

14 A No, I had no troubles.

15 Q None around that time?

16 A No.

17 Q That's the first time you started working for law
18 enforcement in Connecticut?

19 A Yes.

20 MR. BUCKLEY: Your Honor, at this time I move
21 that Mr. Lopez' grand jury testimony of March 24,
22 1976 be made a full exhibit. I ask that it be
23 marked.

24 THE COURT: Without objection?

25 MR. SMITH: Without objection.

1 MR. BUCKLEY: I have 14 copies. I wonder if
2 they could be passed out to the ladies and
3 gentlemen of the jury, so that they won't have to
4 share the one copy?

5 THE COURT: Why don't you read it to them,
6 the part that is relevant?

7 MR. BUCKLEY: It is something, your Honor, I
8 would like when they go into the jury room, that
9 they have it, so they could look at it, rather
10 than having to take the one copy and pass it
11 around.

12 I think that is done in cases where there are
13 tapes of transcripts. Since it is so brief I did
14 have the copies made, and I know they can take the
15 exhibit in, but I would suggest that it would be
16 easier for them if they each have a copy.

17 THE COURT: What is the Government's position?

18 MR. SMITH: Well, your Honor, I think it is
19 within the discretion of the Court. I think the
20 Court's suggestion is a better one, that it be
21 read, rather than having a number of documents in
22 the jury room.

23 The Government will be examining Mr. Lopez on
24 redirect, and it is my intention to put in a number
25 of documents, too. I want to make sure the jury

1 has the opportunity to look at each one of the
2 documents, and not to be inundated with 14 of the
3 same thing. That is why I think your Honor's
4 suggestion is better.

5 MR. BUCKLEY: Your Honor, I have no reason to
6 read it now. I think I read it at some length
7 since three o'clock on.

8 What I would like to do is --

9 THE COURT: One copy may be offered in
10 evidence. There is no need for 14.

11 MR. BUCKLEY: Could I reserve the right later
12 on to move that these perhaps go into the jury
13 room, rather than have one go in?

14 THE COURT: You can ask for it.

15 MR. BUCKLEY: Thank you, your Honor.

16 THE COURT: The only time it is ever done,
17 to my knowledge, is when there is a tape recording,
18 on tape. And then there is a basis for having the
19 jury follow the tape. Other than that I have never
20 seen it done.

21 MR. BUCKLEY: Yes, thank you, your Honor.

22 THE CLERK: Defendant's Exhibit C, your Honor.

23 THE COURT: Defendant's Exhibit C.

24 MR. BUCKLEY: I have no further questions of
25 this witness.

1 Q You get paid for your time?

2 A Yes.

3 Q All right. The amount of people isn't important?
4 The quantity of people you put in the case isn't important;
5 is that correct?

6 A Yes.

7 Q All right. Do you recall being cross examined by
8 Mr. Ortiz' lawyer here in Federal Court in July?

9 A Yes.

10 Q Do you remember him asking you -- this would be at
11 Page 136 of the transcript.

12 MR. SMITH: I object to the form. Can you
13 show it to him and ask him if he remembers what he
14 said?

15 MR. BUCKLEY: I am going to read it to him
16 and ask him what he remembers.

17 MR. SMITH: Do you want the whole thing in
18 evidence?

19 THE COURT: The proper procedure is to ask the
20 witness "Did you ever at any previous time, more
21 specifically at a trial in this court, on such and
22 such a day, make any other statement other than
23 what you are saying here today?" If he says no,
24 then put it in front of him and say "Does this
25 refresh your memory?"

1 overruled. It may be made a full exhibit, then you
2 can read it to your heart's content.

3 Are you going to read the statement now,
4 Counselor, now that it has been made a full
5 exhibit?

6 MR. SMITH: Yes, your Honor, I am.

7 BY MR. SMITH:

8 Q This question was asked of you at the Ortiz trial:
9 "Did you tell this unidentified person, this young boy who
10 came down, what you wanted?

11 "Answer: I told him what I want.

12 "Question: Okay. This person was not Jesus Ortiz,
13 was it?

14 "Answer: No."

15 MR. BUCKLEY: Your Honor, is that admitted
16 now as a full exhibit?

17 THE COURT: A full exhibit.

18 MR. BUCKLEY: I want to voir dire on it.
19 My objection before was -- I already objected to
20 the offer, and he said he would withdraw it.

21 THE COURT: You will have a chance to cross
22 examine on it again.

23 MR. BUCKLEY: I thought your Honor ruled on
24 my question, not on the offering of it. Then it
25 got marked, and I sat back down.

1 I would like to ask him one question on voir
2 dire, because Mr. Smith did show it to him.

3 THE COURT: What is the question?

4 MR. BUCKLEY: That he read it without his
5 glasses, your Honor. He looked at it and he read
6 it, and he answered "Yes." That is what I would
7 like to ask him, if he had any trouble reading it.

8 He couldn't read any of the things that I
9 wanted to show him, but he read the Government's
10 statement.

11 THE WITNESS: I attempted to read it, but I
12 couldn't see -- my eyes --

13 MR. BUCKLEY: He said yes. He said he read it.
14 He didn't say he couldn't see it.

15 THE COURT: It is a full exhibit. It can be
16 read to the jury, and it stands on the record.
17 Whether he read it or he didn't, it is a full
18 exhibit.

19 BY MR. SMITH:

20 Q Mr. Buckley asked you if you know Jose Hernandez?

21 A Yes.

22 Q You do know Jose Hernandez, correct?

23 A Yes.

24 Q Mr. Hernandez was with you on February 5, 1976, was
25 he not?

1 not absolutely clear what it means.

2 What we are conceding is that what Mr. Lopez
3 came out of the house with and gave to Officer
4 Valentin was cocaine. We are not conceding who
5 he got it from, or where it came from in the house,
6 or anywhere else.

7 I thought it would be better to say that now,
8 rather than argue it later on.

9 THE COURT: The record is very clear.

10 MR. BUCKLEY: Thank you.

11 MR. SMITH: Your Honor, the Government rests.

12 MR. BUCKLEY: Your Honor, could I have a couple
13 of minutes with my client to discuss something
14 with him?

15 THE COURT: Suppose we excuse the jury for a
16 few minutes?

17 MR. BUCKLEY: Fine.

18 (In the absence of the jury.)

19 MR. BUCKLEY: My client and I discussed on
20 several occasions whether or not he would testify
21 in the case. And I would like to put him on the
22 stand, for like 30 seconds, just to put it on the
23 record, what we discussed, and how he feels about it,
24 and the reasons why he is not going to elect to
25 testify.

1 J O S E E N R I Q U E M E L E N D E Z, being
2
3 duly sworn, testified through the interpreter as
4 follows:

5 THE CLERK: You may be seated. Would you
6 state your full name?

7 THE WITNESS: Jose Enrique Melendez.

8 THE CLERK: And your address?

9 THE WITNESS: 15 Cabot Street, Hartford.

10 DIRECT EXAMINATION BY MR. BUCKLEY:

11 Q Mr. Melendez, you and I have discussed on a number
12 of occasions, including today, whether or not you would
13 testify in your own defense in this case; is that true?

14 A Yes.

15 Q And I have told you that as a defendant you do not
16 have to testify; you have a right to remain silent through
17 this whole case, and make the Government prove it; is that
18 correct?

19 A Yes.

20 Q I also told you that you could waive that right and
21 you can testify and get up on the stand and tell the jury
22 whatever you want to tell them in your defense; is that
23 correct, if you want?

24 A Yes.

25 Q One of the things that I told you, and you are aware
26 of, if you do decide to get up on the stand and testify, the

1 Government has the right to bring out that you have been
2 convicted of a prior federal narcotics offense in the last
3 few years, in this same court? You understand that they can
4 bring that out and the jury would know that if you do
5 testify; is that correct?

6 A Yes.

7 Q All right. And based on that fact, and other
8 things that you and I have discussed as to the facts of this
9 case, you have told me after we talked about it at some
10 length, that you do not wish to testify; is that correct?

11 A Yes.

12 MR. BUCKLEY: I have no further questions.

13 THE COURT: Anything else that you want to say
14 at this point?

15 THE WITNESS: No, sir.

16 THE COURT: Thank you.

17 (Witness excused.)

18 MR. BUCKLEY: Due to the stipulation and the
19 changes in the complexion of the case, it is going
20 to end a little earlier than I thought.

21 I do not have any defense witnesses. I would
22 like to adjourn for today and start tomorrow morning,
23 if we could. I have one paragraph of a request to
24 charge. It is very simple -- I can't find it; I
25 know I have it, because I had it typed last week,

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MR. BUCKLEY: Thank you, your Honor.

THE COURT: Are counsel ready to proceed?

MR. SMITH: Yes, your Honor.

THE COURT: Call the jury, please.

Both counsel will not speak too rapidly, so that our interpreter will have a chance to interpret, and also do not use the first person, "I", as to what you believe or don't believe. It should be in the third person.

(In the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen of the jury. Counsel report that they are ready to proceed, and the defendant is present.

You may proceed, Counselor, to sum up.

MR. SMITH: Thank you, your Honor.

Good morning, ladies and gentlemen. Initially, I would like to thank you for listening patiently and carefully, as I know you did yesterday. I appreciate it, and I'm sure that my thanks go as well for Mr. Buckley.

This is the point in the trial, ladies and gentlemen, where we as lawyers get to talk to you directly. We get to make our legal arguments to you directly, and we get to emphasize the facts as call to your attention certain facts that we think

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are important.

And I am going to be doing that in just a couple of minutes. But before I ask you to go into the facts of this case, I would like to make a couple of preliminary remarks.

If when I am going over these facts I should say "I", or inadvertently mention my own name, and say "I believe," or "we submit," what I am saying to you is that the Government's position is that you should find on the basis of the facts that a certain thing occurred. And when I am going over these facts, if my statement of the facts is a little bit different than what you recall the facts to be, or if your recollection of the facts is different from mine, your recollection of the facts counts.

You are the judges of the facts. When Mr. Buckley and I say what Mr. Buckley and I think are the facts that happened, or this fact happened, we are really saying that we want you to find that. But nobody can make you find any facts at all.

It is completely up to you; you are the judges of the facts. Judge Clarie is the judge of the law.

The only thing we want you to do is -- the only thing that the Government asks you to do when

1 you are listening to our arguments, and listening
2 to Mr. Buckley, and, importantly, when you go in
3 there to deliberate, is to use your own common
4 sense, and to listen to the law that Judge Clarie
5 gives you, and apply that law to the facts as you
6 find them to be.

7 The first fact I would like to talk about,
8 ladies and gentlemen, is this. This is Government's
9 Exhibit Number 1. This is a fact. This bag
10 contains cocaine. There is no dispute about that.

11 There is no dispute that cocaine is
12 classified as a federal narcotic. There is no
13 dispute that it is against the law, it is a
14 violation of federal law to possess cocaine with
15 intent to distribute cocaine, and to actually
16 distribute cocaine, and to conspire or agree with
17 another person to distribute cocaine. There is
18 no dispute about that.

19 The only dispute in this case is whether
20 Kiki Melendez, the defendant, had anything to do
21 with the distribution and possession of that
22 cocaine.

23 Now, you heard two people testify as to the
24 facts leading up to this sale of cocaine on
25 February 10, 1976. Because these facts are

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important, because we think that they shed a lot of light on what actually happened on February 10th, I would like to briefly go over the facts with you.

The first fact is really an incident. And that is the incident that took place on February 4, 1976.

Now, you will recall Luis Lopez and Rafael Valentin testified that they both went to 15 Cabot Street, looking -- not for Kiki Melendez, but for Frankie Melendez. And their purpose in going there was to buy -- not bags of cocaine, but bulk, a quarter piece, a completely different configuration of cocaine. And their purpose was to buy it from Frankie Melendez.

Well, they didn't see Frankie that day. Instead, they saw Kiki. And they had a conversation with him.

And during the course of that conversation something was said, to this effect: "We're looking for Frankie; we want to buy a quarter piece of cocaine." And Kiki Melendez said something to the effect "How do I know you are not cops?" And there was an argument. And, according to Trooper Valentin, Kiki became angry, so Valentin and Lopez left.

The Government submits to you, the prosecution

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submits to you, that this incident is important.
And the Government thinks it is important for three
reasons.

First of all, we submit that that incident
shows that way back even on February 4th Kiki
Melendez was guarded, he was cautious, he was
suspicious of policemen. His response wasn't
"Go away, I don't sell cocaine" -- that wasn't his
response. His response was "How do I know you are
not cops?"

The second reason we think this incident is
important is because it establishes that Kiki
Melendez learned on that night that Luis Lopez had
a criminal record. Remember how Luis Lopez said
"I'm not a cop; I was in Lewisburg with Frankie.
I'm not a policeman."

Still, the sale didn't take place. But
because of Luis Lopez' telling Kiki that Luis was
in prison with Frankie, Kiki Melendez had some
basis for later checking out Luis Lopez, to find
out if he was safe to deal with.

Now, the third thing we think is important
about this incident is that it shows you how
valuable a person like Luis Lopez, who has a
criminal record, can be to an undercover narcotics

1 investigation. Valuable for a number of reasons.
2 First of all, because he has been in jail he knows
3 the people who he is dealing with. And he can use
4 his criminal record like a calling card.

5 Now if I ask one of you gentlemen, or one of
6 you ladies, can you take us down and show us this?
7 Could you do that? Of course not. You wouldn't
8 have any idea, the slightest idea, who is dealing
9 in cocaine, where they are dealing -- you just don't
10 know these things. It takes a person who has that
11 type of background to gain your trust, and if they
12 are mistrusted initially by a dope dealer, they
13 can always use their criminal record as kind of a
14 calling card: "Here, check me out; I was in jail
15 with Joe; I can't be a cop." Please remember that,
16 ladies and gentlemen, because we think that is
17 important.

18 Now the next incident I would like to talk to
19 you about that the prosecution submits is important
20 to this case is the incident that took place on
21 February 9th. You will recall that actually there
22 were two incidents on February 9th. The first took
23 place at 15 Cabot Street, and the second took place
24 a little bit later on, outside the Spanish Bar.
25 That was on February 9th.

1 And you recall that there was testimony --
2 not just testimony by Luis Lopez, but testimony by
3 Luis Lopez and Rafael Valentin, a Connecticut
4 State Trooper who was working undercover at that
5 time, that there were two separate conversations
6 with Kiki Melendez that date, about, not a quarter
7 piece, but about bags of cocaine -- a completely
8 different configuration.

9 The first conversation took place outside the
10 door to the second floor apartment. And you
11 remember that Luis Lopez and Rafael Valentin
12 testified that they went to the apartment initially
13 and asked for Frankie, because they wanted to buy
14 a quarter piece. But, instead of seeing Frankie,
15 once again they saw Kiki, and there was this
16 conversation, the first conversation.

17 And, ladies and gentlemen, please remember
18 this: during the course of this conversation,
19 which Trooper Rafael Valentin overheard, Kiki
20 Melendez did three things: he apologized to Luis
21 Lopez for the argument, or the disagreement which
22 they previously had on February 4th. He also
23 offered to sell Luis Lopez bags -- remember, a
24 different configuration. He offered to sell
25 Luis Lopez bags of cocaine.

1 And the third thing he did, which is what he
2 said, he said, "I'll sell them to you, Lopez, but
3 not to him," pointing to Valentin.

4 Now, we think, the Government respectfully
5 submits that this is important. And we ask you to
6 consider it: this incident, this first incident
7 outside the second floor apartment at 15 Cabot
8 Street indicates three things. First of all, it
9 indicates that on February 9th, the day before
10 these bags of cocaine were sold, Kiki Melendez
11 had bags of cocaine, or had access to bags of
12 cocaine. That can't be refuted; it cannot be
13 disputed. Every shred, and every scrap of
14 evidence that you heard indicates that that is
15 true.

16 Now, the second thing that this incident
17 outside the apartment indicates is that not only
18 did he have bags, but he was willing to sell these
19 bags to Luis Lopez. But, he was only willing to
20 sell them to Luis Lopez alone, not in front of
21 Rafael Valentin, and not to Rafael Valentin.

22 That is important, ladies and gentlemen.
23 Please keep that in mind.

24 Finally, we think that this incident is
25 important because it indicates that sometime between

1 February 4th, when this argument took place, and
2 February 9th, Kiki had checked out Luis Lopez.
3 Remember on February 4th he said "How do I know
4 you are not a cop?" Lopez said "I was in Lewisburg
5 with Frankie; I'm not a cop."

6 The next time Lopez and Valentin see Kiki
7 Melendez he said "I'm sorry. I'm sorry about the
8 argument the last time. I will sell to you."

9 Now, we don't know who Kiki Melendez checked
10 Luis Lopez out with, but that is an inference, and
11 it is an inference which we respectfully submit you
12 should draw from the facts that you have heard.

13 But, this wasn't the only conversation that
14 took place on February 9th. Remember Lopez and
15 Valentin testified that they both left 15 Cabot
16 Street and drove to the Spanish Bar, Cafe D'Esquina
17 Famosa -- famous corner. And outside the Spanish
18 Bar they stopped and they parked, and they sat in
19 their car and talked to a number of people. And
20 who did they see? Low and behold, Kiki Melendez
21 walking across to the car. And what does Kiki
22 Melendez do? Kiki Melendez walked up to the car,
23 to the side where Luis Lopez was sitting, and right
24 in the presence of Rafael Valentin had another
25 conversation with Lopez, and Rafael Valentin,

1 undercover State Trooper, who was supervising
2 Lopez, overheard Kiki Melendez say to Lopez "Look,
3 if you want to buy bags come on back to 15 Cabot
4 Street, but come alone. Don't bring him."

5 You can't ignore that, ladies and gentlemen.
6 Please don't ignore that.

7 We submit to you that this is important, for
8 all of the reasons that we have talked about before;
9 namely, willingness to deal, and things like that.
10 But it is also important because here Kiki Melendez
11 is outside the Spanish Bar and he says to Lopez
12 "If you want to buy bags of heroin come back to
13 15 Cabot Street." That indicates that Kiki didn't
14 carry the bags with him; he kept them someplace.
15 Where did he keep them? He kept the bags at
16 15 Cabot Street.

17 And we submit to you on the basis of the
18 evidence that you have heard, that you should
19 conclude that he kept them with his brother-in-law,
20 Jesus Ortiz. His "brother-in-law held the dope.

21 Now, the prosecution also submits to you that
22 what happened on February 5th and February 9th,
23 these incidents I have talked about so far, should
24 tell you something about Kiki Melendez. First of
25 all, it should tell you that he is tricky, and that

1 he is devious, and he is very careful about whom
2 he sells narcotics to. And in the presence of whom
3 he sells narcotics -- he's very careful.

4 Secondly, it should tell you, the Government
5 submits to you, it should tell you that he most
6 certainly did participate in the sale of these
7 bags of cocaine.

8 Now, the thing you have got to decide,
9 ladies and gentlemen, is whether you are going to
10 believe Luis Lopez' sworn testimony as to what
11 happened on February 10th. That is what you have
12 to decide. Lopez testified that as soon as he got
13 to 15 Cabot Street he walked in, he met an
14 unidentified woman, in the second floor apartment.
15 He told this woman he was looking for Frankie,
16 to buy a quarter piece.

17 While he was talking to her another Puerto
18 Rican male, whose name he didn't know -- he did not
19 know the name of that Puerto Rican male -- came
20 downstairs and said "Who is asking for Frankie?"

21 Lopez told this unidentified male "I am. I'm
22 looking for a quarter piece."

23 The man -- what did the man say? The man didn't
24 say "What are you talking about?" He gave the
25 logical response: "Looking for a quarter piece?"

1 Frankie is not here, and Kiki is sleeping." That
2 should tell you something, ladies and gentlemen.

3 Now, remember, this is the unidentified male
4 who later called Luis Lopez back into the house.
5 Once he got into the house he met Kiki on the
6 second floor landing, and he went up to the third
7 floor apartment, where this cocaine actually
8 changed hands among Chombo and Jesus Ortiz and
9 Kiki Melendez and Luis Lopez.

10 And you remember, ladies and gentlemen,
11 Mr. Lopez testified that a woman, an unidentified
12 woman, got this cocaine from another room and
13 handed it to Chombo, Jesus Ortiz. And Chombo made
14 this movement, and counted it out. And the dope
15 passed into Kiki's hands, and it passed to
16 Mr. Lopez' hands. The money passed from Lopez'
17 hands into Kiki's hands, then back to Chombo. But,
18 remember, please, ladies and gentlemen, remember the
19 unidentified woman.

20 The point is this, ladies and gentlemen: When
21 Mr. Buckley gets up here he is going to say to you
22 ladies and gentlemen that Luis Lopez is a bounty
23 hunter. That is what he will say, he is being
24 paid by ears. And he has got the incentive to drag
25 as many people into the case as he possibly can,

1 because the more people, the more money. That is
2 what he is going to say to you.

3 When he is saying that to you, ladies and
4 gentlemen, you should ask yourselves, well, if that
5 is true, then why didn't he make up a name for
6 this unidentified woman? Why didn't he do that?
7 Why didn't he exaggerate her involvement?

8 Remember, I am talking about the unidentified
9 woman who got the cocaine and gave it to Chombo.
10 Why didn't he exaggerate her involvement? Why
11 didn't he say "Yes, I think that unidentified woman
12 was Marie Ortiz, the sister of Jesus"? Why didn't
13 he say that?

14 Why didn't he make up an identity for the
15 unidentified male who called him back in? Why
16 didn't he exaggerate the involvement of this other
17 unidentified woman who he met at the second floor
18 apartment?

19 If what Mr. Buckley is saying to you is true,
20 then he would have done that, because it would have
21 been more money. It would have meant five
22 defendants, instead of two.

23 In point of fact, ladies and gentlemen, he
24 didn't do that because Luis Lopez said "I don't
25 know the name of that woman; I don't know the woman.

1 She's unidentified." The one who got the cocaine
2 and handed it to Chombo -- he didn't identify this
3 woman that he met outside the second floor
4 apartment. He could have done that -- more money.

5 In point of fact, he didn't do it because he
6 is telling you the truth. There were two people
7 involved in the sale of this cocaine, directly,
8 whose identity he knows. One of them is sitting
9 right there. The other is Jesus Ortiz.

10 I ask you also to consider the details of
11 Luis Lopez' testimony. He testified that this
12 transaction took place in Jesus Ortiz' apartment.
13 He walks in, Jesus calls to the unidentified woman
14 "Bring me the dope," in Spanish. She comes in with
15 an aspirin tin and hands it to Jesus Ortiz. He
16 makes this motion; he counts out 15 bags, and hands
17 the 15 bags to Kiki, who recounts them, gives them
18 to Lopez, and Lopez gives the money to Kiki, who
19 counts the money, and gives it to Ortiz, who
20 counts the money again.

21 The point is, do you think this detail, ladies
22 and gentlemen, was made up? Does it sound like it
23 was made up? If someone is going to make up a
24 story, ladies and gentlemen, they would make up
25 something a lot simpler than that -- it is a lot

1 simpler to say "Oh, yes, the deal took place right
2 outside the apartment. Jesus Ortiz and Kiki
3 met right there, and we exchanged the dope."

4 When you are fabricating something, you are
5 not fabricating something with all that detail.
6 You are not going to put yourself in a position
7 where there are a lot of other people around.
8 You are not going to do that, ladies and gentlemen.
9 Please, we ask you, please, think about it.

10 The point is, if you are going to lie -- if
11 he was lying he would have made up something a lot
12 simpler. He didn't. The reason he didn't is
13 because he is not lying.

14 Now, there are other reasons why the
15 Government submits that you should believe the
16 testimony of Luis Lopez. First of all, his
17 testimony is supported in large part by the
18 testimony of Rafael Valentin. Valentin told you --
19 you heard testimony of an undercover Connecticut
20 State Trooper who had told you on two separate
21 occasions, the day before -- not even the day
22 before, the afternoon before these bags were sold,
23 that the defendant in this case offered to sell
24 bags, not bulk, bags, to Luis Lopez.

25 He offered to sell them, these bags, at

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15 Cabot Street, and told him to come back there,
and come back alone.

I think it is clear that Kiki Melendez was
setting up the transaction at a future date. That
future date was the very next day, when, in fact,
they did go back and buy these bags of cocaine.

Now, you are the judges of the facts, ladies
and gentlemen, and the Government, the prosecution,
can't make you find any facts at all. It is
completely up to you.

But we respectfully submit to you that your
common sense should tell you that on February 10th,
1976 Kiki Melendez did exactly what he said he was
going to do on the afternoon of February 9th: he
participated in the sale of this cocaine, and he
did it with his brother-in-law.

Secondly, Luis Lopez' testimony is corroborated
by something else: it is corroborated by an event
which took place directly after this sale on
February 10th. Remember, on three separate
occasions Rafael Valentin and Luis Lopez went
looking for Frankie Melendez -- not Kiki; went
looking for Frankie, and were never able to find
him.

Did you get the impression that Frankie was kind

1 of an all-over type guy? Very difficult to locate?

2 Well, during the course of this transaction
3 on February 10th Luis Lopez had a very brief
4 conversation with Kiki, where Kiki said "Look, if
5 you want to buy some more, go see Frankie; he'll
6 give you a better price. He's at the bar right
7 now." Remember that, and I hope you do remember
8 that.

9 And then, after Lopez walks out of the
10 apartment and gives the 15 bags to Rafael Valentin,
11 Valentin and Lopez went somewhere. Where did they
12 go? They went directly to the Spanish Bar. Whom
13 did they see there? Frankie Melendez. This is
14 the first time they have seen him. How did they
15 know that Frankie Melendez just happened to be at
16 the bar at that particular time? He was never
17 there the other times. They went back looking for
18 him. It is not consistent, ladies and gentlemen,
19 that they just happened to find Frankie Melendez
20 at the bar that afternoon. The only way they knew
21 that Frankie Melendez was at the bar that
22 afternoon is because Kiki, when he was handing this
23 dope to Luis Lopez, told him "If you want to buy
24 some more go see Frankie; he's at the bar." That's
25 how they knew.

1 And if Kiki hadn't said that, they wouldn't
2 have known. So, that's another aspect of corrobora-
3 tion of Luis Lopez' testimony.

4 There is still another reason why, we submit,
5 you should believe him. It is because he really
6 has no motive to lie. There is absolutely no
7 question, ladies and gentlemen, Luis Lopez has a
8 criminal record, absolutely no question at all
9 about that. But we ask you to bear in mind that
10 just because a person has a criminal record it
11 doesn't necessarily mean that he is a liar. It
12 doesn't mean that he is lying in any one particular
13 case. And it certainly doesn't mean you cannot
14 believe him in this case.

15 He does have a criminal record. There is
16 no question about that. But the fact that a person
17 has a criminal record doesn't automatically supply
18 a motive to lie. Remember, there is a difference
19 between having a record and having a motive. Please,
20 we ask you to keep that in mind. That is really
21 important: the fact that a person has a record
22 doesn't automatically supply a motive to lie. A
23 person is not going to knowingly and willfully get
24 on the witness stand in the United States District
25 Court, in Federal Court -- a person is not going

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to get on the witness stand in Federal Court and willfully and knowingly commit perjury unless he has got one, powerful motive -- unless he has got a motive.

We submit to you that Luis Lopez does not have a motive.

Now, the defense wants you to believe that Luis Lopez is making this whole story up about Kiki Melendez, to get more money. We submit to you that that is not so. Luis Lopez, contrary to what Mr. Buckley will say to you, is not paid like a bounty hunter. Luis Lopez told you, and Trooper Valentin told you that. The fact is that he works three or four days per week, from November of 1975 until April of 1976. And for that he got approximately \$3,500.

In addition to that he had expenses, like gasoline, and things like that. So, we are not talking about an awful lot of money, and not talking about an awful lot of profit.

Secondly, it doesn't make any sense to say that he is getting paid like a bounty hunter, and because of this he is lying. Because, as I stated to you before, if that were true, he would have made up an identity for this woman who handed

1 Chombo the dope; he would have made up an identity
2 for this woman on the second floor apartment, and
3 would have made up an identity for this man who
4 called him back in. But, he didn't do that.

5 Now, the point is, as I said before, if Luis
6 Lopez is being paid like a bounty hunter, and if
7 he were lying, there would be a lot more than two
8 defendants in this case.

9 We ask you to consider that when Mr. Buckley
10 gets up here and asks you to disregard the fact
11 that twice on the afternoon, before the sale of
12 these bags of cocaine, the defendant in this case
13 said "I'll sell you bags of cocaine -- I'll sell
14 you bags of cocaine at 15 Cabot Street. Come back
15 there alone."

16 Ladies and gentlemen, don't disregard that.

17 Now, the defense also wants you to believe
18 that Luis Lopez has a motive, a motive to lie,
19 because he got in trouble with the police. It was
20 brought out in New Haven, about a year ago, this
21 incident where he was arrested for threatening.

22 First of all, in connection with this I want
23 to make two very brief points: first of all, this
24 incident occurred after he was already working for
25 the Connecticut State Police, so that is not a

1 motive for him to work for the Connecticut State
2 Police. This occurred after he already was.

3 Secondly, what is the motive? What is the
4 motive? Is it fear? Gratitude? Is that what
5 Mr. Buckley is saying?

6 Luis Lopez is testifying out of fear or
7 gratitude, because he wants to thank the State
8 Police for helping him out, when he got in trouble,
9 or he is afraid that if he gets in trouble again
10 the Connecticut State Police wouldn't help him out?
11 Is that fear or gratitude?

11 12 If it is, we submit to you that that doesn't
13 make sense either, because if it is fear or
14 gratitude, then this fear or this gratitude would
15 have existed way back prior to this case, and he
16 would have, like I said before, he would have made
17 up an identity for this woman who handed Chombo
18 the dope. He didn't do that. He would have made
19 up all these identities. He would have exaggerated
20 their involvement. There would have been five
21 defendants instead of two.

22 Fear and gratitude is just like -- it doesn't
23 wash. Please, ladies and gentlemen, don't accept
24 a solid mass of theory. Don't accept the theory
25 that because he has a criminal record all of these

1 things are a machine, and you turn the crank and
2 it comes out that, well, Luis Lopez has a criminal
3 record, therefore we won't believe him.

4 Don't accept that. Think about every one of
5 these arguments, ladies and gentlemen, and ask
6 yourself where the motive is. And if you do that
7 you will find the real motive. There are not the
8 traditional motives; there is no evidence of a
9 grudge between Luis Lopez and Kiki Melendez. There
10 is no evidence of that at all. Nor is there any
11 evidence of a grudge between him and Frankie
12 Melendez, or any other member of the Melendezes.
13 There is no evidence of a lovers triangle. There
14 is no evidence of envy or jealousy on the part of
15 Luis Lopez.

16 In short, ladies and gentlemen, there is no
17 motive to lie. And he doesn't have a motive to lie,
18 and he is not lying.

19 The defense also wants you to reject Luis
20 Lopez' testimony because his testimony in court was
21 different from his testimony before the grand jury.
22 You can be sure that when Mr. Buckley gets up he
23 is going to read, like he did yesterday, the grand
24 jury testimony -- question by Mr. Smith; answer by
25 Mr. Lopez; question by Mr. Smith, answer by

1 Mr. Lopez.

2 He is going to say -- he is going to read this
3 over and over to you. There is no question that
4 Luis Lopez' grand jury testimony is not exactly
5 like his testimony on the stand. There is no
6 question about that. We are not telling you that
7 it is.

8 But we ask you to do two things. First of
9 all, consider an overview. Just how minor are
10 those inaccuracies?

11 When you go into the jury room read over the
12 transcript. In there he says he paid Chombo. In
13 there he says he got the dope from Chombo. He said
14 the transaction took place in the third floor. He
15 talked about the aspirin tin; talked about the woman.
16 And he talked about the woman handing the package
17 to Chombo, which Chombo gave to Kiki. He talked
18 about that.

19 Now, is it unreasonable to say that Chombo
20 gives the dope to Kiki, Kiki gives it to Lopez?

21 When he is asked in the grand jury, without
22 having looked at any notes or anything, is it
23 unreasonable for him to say "Well, I got the dope
24 from Chombo, and I paid Chombo"? Well, he did.
25 The dope came from Chombo, and the money went to

1 Chombo.

2 Think about that. And think also -- this is
3 important, ladies and gentlemen, think about the
4 circumstances under which he testified. He had not
5 seen his case report, nor had Rafael Valentin gone
6 over the case report. They both indicated just
7 no preparation.

8 They testified in several cases that day, and
9 they had no notes in front of them. Think about
10 that.

11 And, if you do, we submit to you that you will
12 find that Luis Lopez was not lying; that he was
13 confused.

14 If you do this you will find that he was not
15 lying, that he was confused. As a matter of fact,
16 ladies and gentlemen, you will find confusion
17 right on the face -- you will find evidence of
18 confusion right on the face of this transcript.
19 Not lies, but confusion.

20 What do I mean by that? Well, on the witness
21 stand Luis Lopez testified that he paid \$180 for
22 these 15 bags. I am sure you will all recall that.
23 The money that Rafael Valentin gave him.

24 On Page 3 of the transcript Luis Lopez
25 testified -- I asked him to give me the price, and

1 he gave me a price of \$180 for 15 bags.

2 On Page 5 of the transcript Luis Lopez -- I
3 asked Luis Lopez "How much did you give him?" He
4 testified "I gave him \$190."

5 Now, clearly that indicates confusion. Two
6 pages later. And there is a \$10 difference. \$180
7 and \$190.

8 The man told you he had not gone over the
9 notes, had not had a chance to sit down and be
10 prepared by the prosecutor, nor had the other
11 witness, the Connecticut State Trooper.

12 We submit to you that it is not so unreasonable
13 to believe that he is going to be confused. He
14 worked on a number of cases, involving a number of
15 individuals. And he testified about them that day.
16 And, ask yourselves, did you have kind of a
17 difficult time keeping track of all the names that
18 are going around: Kiki, Chombo, Frankie, Jesus
19 Ortiz? There are a lot of names going around in
20 just this case. So, please, just try to appreciate
21 the fact that he was confused.

22 In short, ladies and gentlemen, the defense
23 wants you to believe that Luis Lopez got up on that
24 witness stand and knowingly and willfully committed
25 perjury. The Government submits to you that he

1 most certainly did not. He did not. He has been
2 in jail before; he doesn't want to go back. And
3 that is exactly where you go when you commit
4 perjury in United States District Court.

5 He is not going to do that. He has no motive
6 to do this. He told you the truth, and you have
7 got to decide whether you are going to believe it.

8 You have got to decide whether you are going
9 to disregard the fact that on the day before this
10 transaction the defendant in this case offered to
11 sell bags, the same type of things in here
12 (indicating) to the same individual, at the same
13 price, on the condition that he come alone.

14 And, he comes alone. He follows Kiki Melendez'
15 instructions. And now you are going to disbelieve
16 him because he did what that man told him to do?
17 And he threatened a Connecticut State Trooper? You
18 are going to disbelieve that?

19 Now, the Government submits to you that you
20 shouldn't. You should believe him.

21 When you go into the jury room, ladies and
22 gentlemen, try to ask yourselves, what do I believe?
23 What Luis Lopez told me about -- do you believe
24 what he told you about Chombo? If you believe what
25 he told you about Chombo, then you should believe

1 what he told you about Kiki Melendez. This is
2 corroboration as to what Luis Lopez says about
3 Kiki Melendez.

4 Rafael Valentin is not here to tell you about
5 supporting facts regarding Chombo; he's here to
6 tell you about supporting facts concerning Kiki.
7 If you believe what Luis Lopez told you about
8 Chombo, for heaven sakes, logic and common sense
9 tells you you should believe it about Kiki. And
10 if you don't believe it about Kiki, then you
11 shouldn't believe it about Chombo.

12 But the problem is, if you don't believe it
13 about Kiki, and you don't believe it about Chombo,
14 where did the dope come from? Is this a figment
15 of our imagination?

16 No, ladies and gentlemen, this is narcotics.
17 And the people who sold this are dope dealers.
18 Make no mistake about that, please.

19 Now, the most important thing, the most
20 important point I want to make to you is this:
21 when Mr. Buckley gets up here he is going to attack
22 Luis Lopez' credibility. He will going over his
23 criminal record with you. He is going to talk
24 about inconsistent statements, and he is going to
25 tell you that he has got this motive and that motive.

1 I will ask you to think about these things, and the
2 prosecution hopes that you will.

3 And in his instructions Judge Clarie will tell
4 you that a person who has been convicted of a crime,
5 of a felony, that it is up to you, you are the
6 judges of the facts; you can give their statements
7 any weight you want, or no weight at all. It is
8 up to you.

9 But, I want to make sure -- what the
10 prosecution wants to make sure of in this case,
11 ladies and gentlemen, we are asking you to think
12 about this, and think about it long, and think
13 about it hard: we want to make sure that you
14 don't acquit Kiki Melendez because he was smart
15 enough to sell dope to a man with a criminal
16 record. That is exactly what he did, ladies and
17 gentlemen. Make no mistake about it.

18 He set up this deal in such a way that he
19 would be dealing with Luis Lopez, one on one. He
20 set up this deal so that Rafael Valentin would not
21 be in a position to testify.

22 Don't acquit -- don't come in here, Mr. Foreman,
23 or Madame Forewoman, don't come in here, when the
24 Clerk asks you have you reached your verdict, don't
25 come in and say not guilty because this man was

1 devious enough and smart enough to play it cool.

2 You know that he is devious.

3 The issue, the real issue that you have got
4 to decide is did this man offer this dope on the
5 day before to Luis Lopez at 15 Cabot Street, on the
6 condition that he come alone? The issue is did
7 this man, on February 10th do what he said he was
8 going to do on February 9th? The answer is he
9 most certainly did.

10 The reason why Luis Lopez went to 15 Cabot
11 Street alone is obvious. Kiki knew that Luis
12 Lopez had a criminal record. That is why he
13 wanted him to go there. Because of that criminal
14 record he felt it was safe to deal with Luis Lopez.

15 In point of fact, ladies and gentlemen, the
16 person with a criminal record is about the only
17 individual that a dope dealer will deal with in
18 this context. And he can deal with him because he
19 knows that if the person he is dealing with has a
20 criminal record, then he cannot be a police officer --
21 automatically cannot be a police officer.

22 And he knows that if it comes to a trial that
23 this man to whom he sold the dope, the man with a
24 criminal record, is going to be looked at very
25 closely by the jury. And he knows that he could

1 get his lawyer to bring up these felony convictions,
2 and throw in a red herring, and ask the jury
3 "To give my guy a walk -- give my client a walk,
4 because the man he sold the dope to has a criminal
5 record." Please don't do that, ladies and gentlemen.

6 That is exactly what Kiki Melendez had in
7 mind when he told Luis Lopez to come back to
8 15 Cabot Street alone.

9 Consider Luis Lopez' demeanor while on the
10 stand. By that I mean did he sound to you like he
11 was lying when he told you about Kiki Melendez?
12 About Kiki Melendez' involvement in this case?
13 Remember when Mr. Buckley was vigorously cross
14 examining him, how Luis Lopez got a little hot
15 under the collar? Remember what he said, "But that's
16 the man. That's the man." And he told you what
17 happened. And he was kind of hot under the collar --
18 I think that is a good phrase to describe him, but
19 you might describe it differently.

20 Do you think that was a lie?

21 Consider this when you are in there: Have
22 you ever, in the course of your own experience,
23 in telling the truth about something, when you were
24 a little kid, or whenever, you have been telling
25 the truth about something, yet being repeatedly and

1 consistently questioned, like you are not telling
2 the truth? You really feel like screaming. I am
3 sure you can appreciate that emotion. You feel
4 like screaming. And it is frustration. The
5 Government respectfully asks you to appreciate that
6 on the part of Luis Lopez.

7 The issue is not whether he is a boy scout.
8 We are not telling you he is a boy scout. The
9 Government gives you the facts in this case, and
10 all the facts. He is not a boy scout, but he is
11 telling you the truth.

12 Now, pretty much the final thing I want to
13 say to you, I would like to talk to you about
14 proof beyond a reasonable doubt, and the burden.
15 The reason I want to do that, and I will do it very,
16 very briefly, is because in every case the defense
17 lawyer gets up and says "Ladies and gentlemen,
18 there has been no proof beyond a reasonable doubt.
19 The Government has not sustained its burden. It
20 has got to be proof beyond a reasonable doubt."

21 And you hear it on television, the term,
22 battered around, "proof beyond a reasonable doubt."

23 Judge Clarie is going to tell you what proof
24 beyond a reasonable doubt is. He is going to tell
25 you -- please listen. He is going to say something

1 to the effect that the term "reasonable doubt"
2 means exactly what it says. It means a reasonable
3 doubt.

4 It doesn't mean a microscopic doubt; it
5 doesn't mean any conceivable doubt; it doesn't mean
6 an imaginable doubt. It means a reasonable doubt.
7 It means it is a common sense concept. It is the
8 type of reasonableness that we ask of ourselves
9 in transactions that we go through every single
10 day in matters of importance to ourselves.

11 Is it reasonable? It is a common sense idea.

12 Before Mr. Buckley comes up here and tells you
13 that there has been no proof beyond a reasonable
14 doubt, the prosecution respectfully would like to
15 submit to you that there most certainly has been --
16 there clearly has been proof beyond a reasonable
17 doubt. We submit to you that it would be
18 unreasonable for you to believe that the man who
19 offered to sell these 15 bags -- not bulk, but bags
20 of cocaine -- twice on February 9th, in the presence
21 of the Connecticut State Trooper, who said in the
22 presence of the Connecticut State Trooper, to
23 Luis Lopez, I'll sell you bags, I'll sell you bags
24 at 15 Cabot Street, but come alone" -- it would be
25 unreasonable for you to find that the man who said

1 this did not in fact sell bags or participate in
2 the sale of these bags on the very next day,
3 at the exact same place, under the exact same
4 conditions, which he himself set.

5 Don't allow Kiki Melendez to rely on a
6 situation which he himself created. That is the
7 reason why he imposed this condition. Please
8 don't forget that, ladies and gentlemen.

9 The final thing I want to say to you -- I
10 promise you it is the final thing; I'm picking up
11 my notes right now -- is that we submit that you
12 should follow your common sense and listen to
13 Judge Clarie's instructions. Be fair to both sides
14 in this case. And ask yourselves the type of
15 question that the prosecutor tried to raise when
16 he talked to you a couple of minutes ago.

17 If you do this we submit to you that you
18 should come back with only one verdict, and that is
19 a verdict of guilty to every single count of this
20 indictment.

21 Thank you.

22 THE COURT: It is now eleven o'clock. I think
23 the jury, after an hour, or three-quarters of an
24 hour, deserves a little five minute recess, before
25 we ask them to listen to the defense's summation.

1 MR. BUCKLEY: I would like to make a motion
2 at side bar, so I would appreciate a recess.

3 THE COURT: The jury will be excused at this
4 time.

5 (In the absence of the jury.)

6 MR. BUCKLEY: Your Honor, I hesitated to stop
7 Mr. Smith -- I think that perhaps it is a better
8 practice not to interrupt someone's train of
9 thought and argument -- although the Court might
10 differ with me.

11 But, in his zealousness, particularly in
12 anticipating my remarks, he anticipated what I was
13 going to do, and he then went on to vouch for
14 Mr. Lopez' credibility on at least two occasions,
15 very strongly. He said "He took the stand; he
16 wouldn't lie to you. He wouldn't come in here and
17 testify for the United States Government and commit
18 perjury. We submit he wouldn't do that."

19 And that is exactly what the courts talk
20 about, the vouching for his credibility, and
21 daring the jury to believe that a man would get up
22 here and take an oath and perjure himself.

23 And I think it is highly improper. He not only
24 did it, but he did it in anticipation of remarks
25 that I am going to make that haven't been made yet.

1 I think that is what rebuttal is for. I would
2 submit that he has no right to rebuttal at this
3 point, because he is not rebutting any points that
4 I have made.

5 Also, remarks were made about dope dealers,
6 and defense lawyers do this -- general categories
7 of people who are defense lawyers are going to do
8 this. And I resent being put in a category of
9 someone who is going to come in and trick these
10 people with a concept of reasonable doubt.

11 And that was the implication of what the
12 prosecutor said, that defense lawyers get up here
13 and do this and that.

14 I think it is improper to anticipate, to the
15 degree that Mr. Smith did, and then particularly
16 to turn around after he anticipates what I am going
17 to do, and on two occasions go on at some length,
18 first with the vouching, and then pointing at the
19 stand and saying that Mr. Lopez would not dare
20 perjure himself. "And why would he do it? And we
21 submit he would not lie and commit perjury."

22 It is vouching for the credibility of the key
23 witness in this case, and I think it is improper,
24 and grounds for reversal in the Second Circuit.
25 And I don't think he should have done it on

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argument.

THE COURT: Anything further?

MR. BUCKLEY: No, your Honor.

THE COURT: The Court doesn't consider the remarks prejudicial, as counsel described them. The Court is of the opinion that it is not grounds for reversal.

We will take a short recess.

(Recess.)

(Still in the absence of the jury.)

THE COURT: I have a copy of the Court's charge, for the interpreter, when the proper time comes.

Call the jury.

(In the presence of the jury.)

MR. BUCKLEY: Ladies and gentlemen, I would like to thank you for your patience, as Mr. Smith did.

This is a very short trial, so I don't think we tried your patience too much -- although we did keep jumping up and down, trying to get things into evidence, or keeping things out of evidence. And I hope you appreciate that what we both did, as representatives of the Government and the defendant, is our job. And there are certain things

1 JANUARY 6, 1977 AFTERNOON SESSION:

2 (In the absence of the jury.)

3 THE COURT: I might call to counsels'
4 attention that the Clerk advises me that the
5 copy of the indictment in this file is a Xerox copy.
6 The original apparently is in the Court of Appeals,
7 on the Ortiz case.

8 And I wanted to call that to counsels'
9 attention. Do you have any objection to having
10 the copy sent into the jury room?

11 MR. BUCKLEY: No objection, if I could look at
12 it. I assume it is the same copy that I have?

13 Your Honor, there is something typed on the
14 bottom --

15 MR. SMITH: "Docket Number 1."

16 MR. BUCKLEY: No, I have no objection.

17 THE COURT: All right. I wanted to call it to
18 your attention. Usually we have the original in
19 the file.

20 Call the jury, please.

21 (In the presence of the jury.)

22 THE COURT: Ladies and gentlemen of the jury,
23 now that you have heard the evidence and the
24 arguments of counsel, the time has come to instruct
25 you as to the law governing this case.

1 Although you, as jurors, are the sole judges
2 of the facts, you are duty bound to follow the law
3 as stated in the instructions of the Court. You
4 should apply the law so given to the facts as you
5 find them, from the evidence which is before you.

6 You are not to single out one instruction of
7 the Court alone as stating the law, but you must
8 consider the instructions as a whole.

9 Neither are you to be concerned with the
10 wisdom of any rule of law. Regardless of any
11 opinion you may have as to what the law ought to be,
12 it would be a violation of your sworn duty to base
13 a verdict upon any other view of the law than that
14 given in the instructions of the Court.

15 Now, for certain generalities concerning this
16 matter: The indictment, the original of which you
17 shall have with you in the jury room, is but a
18 formal method of accusing a defendant of a crime.
19 It is not evidence of any kind against the accused
20 in this case, and does not create any presumption,
21 nor permit any inference of guilt.

22 The law presumes a defendant to be innocent
23 of crime. Thus, at the moment the defendant begins
24 the trial, he stands before you free from any bias
25 or prejudice or burden arising from his position as

1 the accused. So far as you are concerned, he then
2 was innocent, and he continues innocent throughout
3 the trial and during the deliberations of the jury,
4 and is overcome when, and only when, his guilt is
5 established beyond a reasonable doubt.

6 If I speak too rapidly, just raise your hand.

7 THE INTERPRETER: It is very good.

8 THE COURT: This presumption also requires that
9 if a piece of evidence offered is capable of two
10 reasonable constructions, one of which is
11 consistent with innocence, it must be given that
12 construction.

13 Whether the burden of proof resting upon the
14 Government is sustained depends not on the number
15 of witnesses nor the quantity of the testimony,
16 but upon the nature and the quality of that
17 testimony.

18 In order to convict one accused of crime, the
19 jury must be satisfied beyond a reasonable doubt
20 of the defendant's guilt. A mere preponderance
21 of the evidence is not sufficient. And if a
22 reasonable doubt does exist in the minds of the
23 jury, they must acquit the defendant.

24 If the evidence justifies in your judgment
25 the conclusion that the accused is guilty, so as to

1 exclude every other reasonable doubt as to the
2 guilt of the defendant, then you will find him
3 guilty.

4 The term "reasonable doubt" means just what
5 the term implies. By a reasonable doubt I do not
6 mean to be understood as stating that the defendant
7 must be found guilty beyond all doubt whatsoever,
8 but beyond a doubt founded in reason, and arising
9 from the evidence.

10 Reasonable doubt is a doubt arising from the
11 evidence or from a lack of evidence, after
12 consideration of all of the evidence in the case.
13 It is not a vague, speculative, imaginary something,
14 but just such a doubt as would cause reasonable men
15 and women to hesitate to act upon it in matters of
16 importance to themselves.

17 Reasonable doubt means such a doubt as will
18 leave the juror's mind, after a candid and impartial
19 consideration of all of the evidence, so undecided
20 that he or she is unable to say that he has an
21 abiding conviction or assurance of the defendant's
22 guilt.

23 If after you have carefully considered and
24 weighed all of the evidence in this case, in the
25 light of the law as the Court will have given it to

1 you, you have a full, firm and abiding conviction
2 that the defendant is guilty as charged in the
3 indictment, then this guilt has been established
4 beyond a reasonable doubt.

5 But if you do not have a full, firm and abiding
6 conviction, then guilt has not been established
7 beyond a reasonable doubt, and you should then
8 acquit the defendant.

9 In order to convict one accused of crime, all
10 of the elements of that crime must be proven beyond
11 a reasonable doubt. Therefore, unless the jury
12 concludes that all of the material elements of said
13 crime or crimes have been committed by the
14 defendant, and said elements have been proven beyond
15 a reasonable doubt, the jury must bring in a verdict
16 of not guilty.

17 In the remainder of what I have to say to you
18 in this jury charge, I shall use the word "prove"
19 or "proved" with reference to the burden which
20 rests upon the Government. I shall speak to you
21 of your finding various facts or elements in the case.
22 But, throughout, you will understand that when I
23 say the Government has to prove a fact to you, I
24 mean it has to prove to you that fact with this
25 degree of proof that I have just defined; that is,

1 beyond a reasonable doubt, even though I may not
2 repeat those exact words.

3 When I say you must find a fact, I mean you
4 must find it proven beyond a reasonable doubt,
5 even though I simply use the word "find."

6 There are two types of evidence from which a
7 jury may properly find a defendant guilty of an
8 offense. One is direct evidence, such as the
9 testimony of an eyewitness. The other is
10 circumstantial evidence; the proof of a chain of
11 circumstances pointing to the commission of the
12 offense.

13 As a general rule the law makes no distinction
14 between direct and circumstantial evidence, but
15 simply requires that before convicting a defendant
16 the jury must be satisfied beyond a reasonable
17 doubt, from all of the evidence in the case.

18 Now, an inference is a deduction or conclusion
19 which reason and common sense lead the jury to draw
20 from facts which have been proved. In arriving at
21 your decision you, the jury, may draw inferences
22 from those facts which are admitted, or those facts
23 which you find to have been proven beyond a
24 reasonable doubt.

25 However, no inference is reliable which is

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drawn from facts which are themselves uncertain.

You, the jury, should not indulge in speculation or conjecture.

Now, a presumption is a conclusion which the law requires the jury to make from particular facts, in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary.

But, unless so outweighed, the jury are bound to find in accordance with the presumption.

This defendant is presumed innocent unless you find beyond a reasonable doubt that he is guilty of the offense or offenses with which he is charged.

You will notice on this indictment that you will have with you in the jury room that the name of one other person appears thereon as a defendant; namely, Jesus Ortiz. It is actually spelled J-e-s-u-s, but in Spanish the "J" is like an "H," so it is generally pronounced in the community as "Jesus" Ortiz -- also known as Chombo.

For the purposes of this trial you will concern yourselves only with the charges against the defendant, Enrique Melendez, also known as Kiki. He is the only person being tried at this time.

The indictment against this defendant, Melendez,

1 contains three separate counts. Each count is a
2 separate and distinct cause of action. Each count
3 embodies or contains allegations which allege a
4 separate and distinct claim under the statute.

5 The mere fact that you may find the defendant
6 guilty or not guilty on one count does not
7 necessarily affect his guilt or innocence on any
8 other count.

9 Now, we come down to more specifics. Count 1.
10 The first count of the indictment charges -- and I
11 quote from it: "On or about the 10th of February,
12 1976, at Hartford, in the District of Connecticut,
13 the defendants, Enrique Melendez and Jesus Ortiz,
14 did unlawfully, willfully and knowingly combine,
15 conspire, confederate and agree with each other,
16 and with others to the grand jury unknown, to
17 commit offenses against the United States; to wit,
18 to violate Title 21 U.S. Code, Section 841(a)(1)
19 by knowingly and intentionally possessing, with
20 intent to distribute, a controlled substance, to
21 wit, a quantity of cocaine. And to knowingly and
22 intentionally distribute the aforesaid controlled
23 substance, said quantity of cocaine; all in
24 violation of Title 21 U.S. Code, Section 846."

25 The indictment goes on in the overt acts:

1 "In furtherance of the aforesaid conspiracy, and
2 to effect the objects thereof, the defendants and
3 co-conspirators did perform the following overt
4 acts:

5 "First, on February 10, 1976 Enrique Melendez
6 and Jesus Ortiz had a conversation.

7 "Secondly, on February 10, '76 Jesus Ortiz
8 handed a package to Enrique Melendez."

9 Those are the two overt acts.

10 The statute with which the defendant is
11 charged in the first count is known as a conspiracy
12 statute. And it provides in part: "Any person who
13 attempts or conspires to commit any offense defined
14 in the Drug Control Act, is punishable by
15 imprisonment or fine, or both, which may not exceed
16 the maximum punishment for the crime or the offense,
17 the commission of which is the object or intent of
18 the conspiracy."

19 The substantive offenses with which the
20 defendant is charged are set out in the second and
21 third counts, under Title 21, Section 841. And
22 they relate to the violation of federal statutes
23 dealing with the possession with intent to
24 distribute or dispense cocaine, and the distribution
25 and dispensing of cocaine, a controlled substance.

1 These are the acts or offenses which the
2 first count charges the defendant conspired to
3 commit.

4 Now, in order to establish the offense of
5 conspiracy charged in the first count of the
6 indictment, the evidence must show beyond a
7 reasonable doubt, first, that the conspiracy
8 described in the indictment was formed and
9 existing at or about the time alleged.

10 Second, that the accused willfully became a
11 member of the conspiracy.

12 Third, that one of the alleged conspirators
13 named in the indictment thereafter knowingly
14 committed at least one of the overt acts charged
15 in the indictment, at or about the time and place
16 alleged.

17 And, fourth, that such overt act or acts were
18 committed in furtherance of some object or purpose
19 of the conspiracy, as charged.

20 If the jury should find, beyond a reasonable
21 doubt, from the evidence in the case that the
22 existence of the conspiracy charged in the
23 indictment has been proved, then proof of the
24 conspiracy offense as charged is complete. And it
25 is complete as to every person found by the jury to

1 have been willfully a member of a conspiracy at the
2 time.

3 By the term "overt act" referred to in the
4 indictment, it is meant any act committed by a
5 defendant in an effort to effect or accomplish
6 some object or purpose of the conspiracy. The
7 overt act need not be in itself criminal in nature,
8 if considered separately and apart from the
9 conspiracy. It may be as innocent as the act of a
10 man walking across the street, or driving an
11 automobile, or using a telephone, or nodding his
12 head.

13 It must, however, be an act which follows and
14 tends toward the accomplishment of the plan or
15 scheme agreed upon. And it must be knowingly done
16 in furtherance of some object or purpose of the
17 conspiracy, as charged in the indictment.

18 If you find from the evidence, beyond a
19 reasonable doubt, that the existence of the
20 conspiracy charged in the indictment has been proven;
21 that during the existence of that conspiracy that
22 at least one of the overt acts alleged was knowingly
23 done by the defendant, or either of them, in
24 furtherance of some object or purpose of the
25 conspiracy as charged, then proof of the conspiracy

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offense as charged becomes complete. And it is complete as to those defendants, if you find that they have been knowingly and willfully a member of the conspiracy at the time the overt act was committed.

Now, what is a conspiracy? A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means.

So a conspiracy is a kind of partnership in criminal purposes, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey or to disregard the law.

Mere similarity of conduct among various persons, and the fact that they may have been associated with each other, and may have assembled together and discussed common aims and purposes, or interests, does not necessarily establish proof of the existence of the conspiracy. However, the evidence in the case need not show that the members entered into any expressed or formal agreement, or that they directly, by words spoken, or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the

1 means by which the object or purpose was to be
2 accomplished.

3 What the evidence in the case must show,
4 beyond a reasonable doubt, in order to establish
5 proof that a conspiracy existed, is that the members
6 in some manner, in some way or manner, or through
7 some contrivance, positively or tacitly came to a
8 mutual understanding, to try to accomplish a
9 common and unlawful plan.

10 The evidence in the case need not establish
11 that all the means or methods set forth in the
12 indictment were agreed upon to carry out the
13 alleged conspiracy, nor that all means or methods
14 which were agreed upon were actually used or put
15 into operation, nor that all of the persons charged
16 to have been members of the conspiracy were such.
17 What the evidence in the case must establish beyond
18 a reasonable doubt is that the alleged conspiracy
19 was knowingly formed, and that one or more of the
20 means or methods described in the indictment were
21 agreed upon to be used, in an effort to effect or
22 accomplish some object or purpose of the conspiracy,
23 as charged in the indictment; and that two or more
24 persons, including the accused, were knowingly
25 members of the conspiracy, as charged in the

1 indictment.

2 One may become a member of a conspiracy
3 without full knowledge of all the details of the
4 conspiracy. On the other hand, a person who has
5 no knowledge of a conspiracy, but happens to act in
6 a way which furthers some object or purpose of the
7 conspiracy, does not thereby become a conspirator.

8 Before the jury may find that a defendant,
9 or any other person, has become a member of a
10 conspiracy, the evidence in the case must show
11 beyond a reasonable doubt that the conspiracy was
12 knowingly formed, and that the defendant or other
13 person who is claimed to have become a member
14 willfully participated in the unlawful plan, with
15 the intent to advance or further some object or
16 purpose of the conspiracy.

17 To act or participate willfully means to act
18 or participate voluntarily and intentionally, and
19 with specific intent to do something which the law
20 forbids, or with specific intent to fail to do
21 something the law requires to be done. That is to
22 say, to act or participate with bad purpose, either
23 to disobey or to disregard the law.

24 So, if a defendant, or any other person, with
25 understanding of the unlawful character of a plan,

1 knowingly encourages, advises or assists for the
2 purpose of furthering the undertaking or scheme,
3 he thereby becomes a willful participant -- a
4 conspirator.

5 One who willfully joins an existing conspiracy
6 is charged with the same responsibility as if he
7 had been one of the originators or instigators of
8 the conspiracy.

9 In determining whether a conspiracy existed,
10 therefore, the jury should consider the actions and
11 declarations of all of the alleged participants.
12 However, in determining whether a particular
13 defendant was a member of the conspiracy, if any,
14 the jury should consider only his acts and statements.
15 He cannot be bound by the acts or declarations of
16 other participants until it is established that a
17 conspiracy existed, and that he was one of its
18 members.

19 Whenever it appears beyond a reasonable doubt
20 from the evidence in the case that a conspiracy
21 existed, and that a defendant was one of the members,
22 then the statements thereafter knowingly made, and
23 the acts thereafter knowingly done, by any person
24 likewise found to be a member, may be considered by
25 the jury as evidence in the case as to the defendant

1 found to have been a member, even though the
2 statements and acts may have occurred in the
3 absence and without the knowledge of the defendant;
4 provided such statements and acts were knowingly
5 made and done during the continuance of such
6 conspiracy, and in furtherance of some object or
7 purpose of the conspiracy.

8 Otherwise, any admission or incriminatory
9 statement made or act done outside of court, by
10 one person, may not be considered as evidence
11 against any person who was not present and did not
12 hear the statement made, or see the act done.

13 Therefore, statements of any conspirator,
14 which are not in furtherance of the conspiracy,
15 or made before its existence, or after its
16 termination, may be considered as evidence only
17 against the person making them.

18 In your consideration of the evidence in the
19 case as to the offense of conspiracy charged, you
20 should determine whether or not the conspiracy
21 existed, as alleged in the indictment. And if you
22 conclude that the conspiracy did exist, you should
23 next determine whether or not the accused willfully
24 became a member of the conspiracy.

25 If it appears beyond a reasonable doubt from

1 the evidence in the case that the conspiracy
2 alleged in the indictment was willfully formed,
3 and that a defendant willfully became a member of
4 the conspiracy either at its inception or after-
5 wards, then there may be a conviction even though
6 the conspirators may not have succeeded in
7 accomplishing their common object or purpose, and
8 in fact may have failed in so doing.

9 The extent of any defendant's participation,
10 moreover, is not determinative of his guilt or
11 innocence. A defendant may be convicted as a
12 conspirator even though he may have played only a
13 minor part in the conspiracy.

14 Now, as to the first count against the two
15 named defendants -- only one of which is on trial
16 here -- the indictment charges a conspiracy between
17 them and other persons unknown to the grand jury.

18 A person cannot conspire with himself alone,
19 and, therefore, you cannot find the defendant
20 guilty unless you find beyond a reasonable doubt
21 that he participated in the conspiracy as charged
22 with at least one other person, whether such person
23 is a defendant or not, and whether named in the
24 indictment or not.

25 Now we come to the second count: "On

1 February 10, 1976, at Hartford, in the District of
2 Connecticut, Enrique Melendez and Jesus Ortiz, the
3 defendants herein, knowingly and intentionally did
4 possess with intent to distribute, a quantity of
5 cocaine, in violation of the law."

6 That portion of the statute to which this
7 count applies reads in part: "Except as authorized
8 by this sub-chapter, it shall be unlawful for any
9 person knowingly or intentionally to distribute
10 or dispense or possess with intent to distribute,
11 or dispense a controlled substance."

12 Cocaine is a crystalline alkaloid, which is
13 derived and obtained from cocoa leaves. Title 21,
14 Section 812 of the United States Code lists
15 cocaine as a controlled substance or drug.

16 There are four essential elements required to
17 be proven by the Government in order to establish
18 the offense charged in the second count of the
19 indictment.

20 First, that the substance involved was, in
21 fact, cocaine; second, that the defendant did, in
22 fact, have knowing possession of cocaine; and
23 third, that his possession was had with intent to
24 distribute or dispense said cocaine; and fourth,
25 that his act or acts were knowingly and intentionally

1 carried out.

2 With respect to the first element, I have
3 defined the term "cocaine." As a matter of law,
4 I instruct you that cocaine is included within
5 Section II of Title 21, Section 812. Therefore,
6 if you find that cocaine was involved, then you
7 will find that the first element has been proven
8 by the Government.

9 With respect to the second element, the law
10 recognizes two kinds of possession: actual
11 possession and constructive possession. A person
12 who knowingly has direct physical control over a
13 thing at a given time is then in actual possession
14 of it.

15 A person who, although not in actual
16 possession, knowingly has both the power and the
17 intention at a given time to exercise dominion
18 or control over a thing, either directly or through
19 another person or persons, is then in constructive
20 possession of it.

21 The law requires also that the possession may
22 be sole or joint. If one person alone has actual
23 or constructive possession of a thing, possession
24 is sole. If two or more persons share actual or
25 constructive possession of a thing, that possession

1 is joint.

2 You may find that the element of possession,
3 as that term is used in these instructions, is
4 present, if you find beyond a reasonable doubt that
5 the defendant had actual or constructive possession,
6 either alone, or jointly with others.

7 In order to prove the third element, the
8 Government must prove that the defendant possessed
9 said controlled drug with intent to distribute or
10 dispense the same.

11 Intent ordinarily may not be proved directly,
12 because there is no way of fathoming or scrutinizing
13 the operations of the human mind. But you may
14 infer a defendant's intent -- you are not
15 obligated to, but you may infer a defendant's
16 intent from the surrounding circumstances. You may
17 consider any statement made and done or omitted
18 by a defendant, and all other facts and circumstances
19 in evidence which indicate his state of mind. It
20 is ordinarily reasonable to infer that a person
21 intends the natural and probable consequences of
22 acts knowingly done or knowingly omitted.

23 With respect to the fourth element, the
24 Government must prove that the defendant's act or
25 acts were knowingly and intentionally carried out.

1 To do something knowingly is to do it
2 voluntarily and intentionally, and not because of
3 mistake or accident or other innocent reason.

4 The purpose of adding the word "knowingly"
5 was to insure that no one would be convicted for
6 an act done because of mistake, or accident, or
7 other innocent reason.

8 It is for you, the jury, to determine whether
9 or not all four of the elements of the crime
10 charged in the second count have been proven by the
11 Government beyond a reasonable doubt. On your
12 findings shall be determined the guilt or innocence
13 of the defendant, Melendez, on this second count.

14 We come now to the third count. The third
15 count of the indictment reads: "On February 10,
16 1976, the two same named persons, the defendants
17 herein, knowingly and intentionally did distribute
18 a quantity of cocaine, in violation of the law."

19 The same statute that I read to you as being
20 applicable to the second count is applicable to
21 this count.

22 The elements required to be proved by the
23 Government in this count are as follows:

24 First, that the substance involved in the sale
25 or transaction was, in fact, cocaine; second, that

1 the defendant did, in fact, distribute said cocaine;
2 and, third, that the defendant's act or acts were
3 knowingly and intentionally carried out.

4 The same proof required in the first and
5 fourth elements of the second count are required
6 with respect to the first and third elements of
7 this, the third count -- and I won't repeat them.

8 In order to prove the second element, the
9 Government must prove not only that the defendant
10 possessed said controlled drug with intent to
11 distribute or dispense the same, but that he did,
12 in fact, dispense and distribute said cocaine, as
13 alleged.

14 One count is on possession; the other count
15 has to do with actually dispensing and distributing.

16 As I previously pointed out, intent ordinarily
17 may not be proven directly, because there is no
18 way of fathoming or scrutinizing the operations of
19 the human mind. But you may infer -- you are not
20 obligated to, but you may infer a defendant's
21 intent from all the surrounding circumstances.

22 You may consider any statements made and done
23 or omitted by a defendant, and all other facts and
24 circumstances in evidence which indicate his state
25 of mind. With respect to this second element, the

1 Government must prove the defendant did actually
2 distribute and dispense said controlled drug.

3 In other words, the Government's evidential
4 proof presented is not directed at simple
5 possession by the defendant of a controlled drug,
6 but rather it alleges that the defendant did
7 actually distribute and dispense or sell a
8 controlled drug, cocaine. Therefore, it is
9 incumbent upon the Government to prove that the
10 defendant did, in fact, distribute or dispense
11 and sell the cocaine.

12 Now, you have heard the evidence. It is the
13 defendant's position, or defense, as to these
14 three counts, that it was Jesus Ortiz, also known
15 as Chombo --

16 THE INTERPRETER: Excuse me for a minute, your
17 Honor? You are on Page 27?

18 THE COURT: My pages aren't numbered. I can't
19 help you.

20 MR. BUCKLEY: I think the pages were out of
21 order.

22 THE INTERPRETER: Thank you very much.

23 THE COURT: You are instructed that the
24 defendant's position or defense as to the three
25 counts is that it was Jesus Ortiz, also known as

1 Chombo, who possessed and sold cocaine to Luis
2 Lopez on February 10, 1976. It is the defendant's
3 position that the informant, Lopez, falsely
4 testified that he received the cocaine from the
5 defendant, Melendez, in order to receive more
6 moneys from the federal and state police officers,
7 because he would then have made a case against
8 two people, rather than one. Those are the issues.

9 We come now to the question of credibility.

10 You, as jurors, are the sole judges of the
11 credibility of the witnesses, and the weight their
12 testimony deserves.

13 You should carefully scrutinize the testimony
14 given, the circumstances under which each witness
15 has testified, and every matter in evidence which
16 tends to indicate whether the witness is worthy of
17 belief.

18 Consider each witness' intelligence, motive,
19 and state of mind and demeanor, and manner while
20 on the witness stand. Consider also any relation-
21 ship which each witness may bear to either side of
22 the case, the manner in which each witness might
23 be affected by the verdict, and the extent to which,
24 if at all, each witness is either supported or
25 contradicted by other evidence.

1 Now, inconsistencies or discrepancies in the
2 testimony of a witness, or between the testimony
3 of different witnesses, may or may not cause the
4 jury to discredit such testimony. Two or more
5 persons witnessing an incident or a transaction
6 may see or hear it differently. And, innocent
7 misrecollection, like failure of recollection, is
8 not an uncommon experience, that you see in everyday
9 life.

10 In weighing the effect of a discrepancy,
11 consider whether it pertains to a matter of
12 importance, or an unimportant detail; whether the
13 discrepancy results from innocent error or from
14 willful falsehood.

15 All evidence of a witness whose self-interest
16 or attitude is shown to be such as might tend to
17 prompt testimony unfavorable to the accused,
18 should be considered with caution, and weighed with
19 great care.

20 A witness may be discredited or impeached by
21 contradictory evidence, or by evidence that at
22 other times the witness has made statements which
23 are inconsistent with the witness' present testimony.

24 If you believe any witness has been impeached,
25 and thus discredited, it is your exclusive province

1 to give the testimony of that witness such
2 credibility, if any, as you may think it deserves.

3 If a witness is shown knowingly to have
4 testified falsely concerning any material matter,
5 you have a right to distrust such witness'
6 testimony in other particulars. And you may reject
7 all the testimony of that witness, or give it such
8 credibility as you may think it deserves.

9 There was testimony here from a law enforcement
10 officer, the State Police officer. Now, the
11 testimony of a law enforcement officer is entitled
12 to no special or exclusive sanctity, merely
13 because it comes from a law enforcement officer.

14 A law enforcement officer who takes the witness
15 stand subjects his testimony to the same examination
16 and the same tests that any other witness does,
17 and in the case of such an officer you should not
18 believe him merely because he is a law enforcement
19 officer. You should evaluate his testimony as you
20 do that of any other witness.

21 Now, you have heard the testimony of Luis P.
22 Lopez, the Government informant. The testimony of
23 an informant who provides evidence against a
24 defendant for pay, must be examined and weighed
25 by the jury with greater care than the testimony of

an ordinary witness.

The jury must determine whether the informant's testimony has been affected by self-interest, or by prejudice against the defendant, or for monetary or other gain or benefit.

In considering the testimony of the witness, Luis Lopez, you will recall that there was testimony about his prior criminal record. I call your attention to the fact that the testimony of a witness may be discredited or impeached by showing the witness has been convicted of a felony; that is, a crime punishable by imprisonment for a term of one year or more.

A prior conviction or convictions do not render a witness incompetent to testify, but it is merely a circumstance which you may consider in determining the credibility of that witness. It is solely within the province of the jury to determine the weight to be given to any prior conviction, as impeachment of his credibility.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of the defendant, Enrique Melendez, to

1 testify.

2 As stated before, the law never imposes upon a
3 defendant in a criminal case the burden or duty of
4 calling any witnesses or producing any evidence.
5 That burden rests with the Government, throughout.

6 Now, the verdict must represent the considered
7 judgment of each juror. In order to return a
8 verdict, it is necessary that each juror agree
9 thereto. In other words, your verdict must be
10 unanimous.

11 It is your duty as jurors to consult with one
12 another, and to deliberate, with a view to reaching
13 an agreement, if you can do so without violence
14 to individual judgment. Each of you must decide
15 the case for yourself, but do so only after an
16 impartial consideration of all the evidence with
17 your fellow jurors.

18 In the course of your deliberations do not
19 hesitate to reexamine your own views, and change
20 your opinion, if convinced it is erroneous. But,
21 do not surrender your honest conviction as to the
22 weight or effect of evidence, solely because of the
23 opinion of your fellow jurors, or for the mere
24 purpose of returning a verdict.

25 Upon retiring to the jury room you will select

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one of your number as a foreman, or forelady --
a foreperson. The foreman will preside over your
deliberations, and be your spokesman in court.

After you have selected this foreman, or
forelady, you will refrain from considering the
case further, until the Clerk brings in to you
the exhibits that have been offered here in this
case, together with a copy of the indictment.

The reason for that is simply this: That
counsel on either side may ask the Court to
correct some statement that the Court made, as to
what the law is on this subject. Or they may ask
that the law be explained more fully, from their
respective points of view.

If the Court accepts such requests on their
part, you might be recalled for a few minutes to
correct, or to enlarge upon any point of law that
either counsel might request.

But, when the Clerk brings in to you the
exhibits and the indictment, you will know then
that you may proceed to conclusion with your
deliberations.

Now, I think we have two alternates. And I
know how they must feel at this time, just when you
are about to go about your work, to be excused.